

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

v.

20 CR 633 (JSR)

LAURELL WELLS,

Defendant.

Trial

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New York, N.Y.
September 19, 2023
9:30 a.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

DAMIAN WILLIAMS

United States Attorney for the
Southern District of New York

BY: JEFFREY COYLE

KATHERINE CHENG

ALEXANDRA ROTHMAN

Assistant United States Attorneys

CROWELL & MORING LLP

Attorneys for Defendant

BY: KELLY T. CURRIE

GLEN G. MCGORTY

DANIELLE L. GIFFUNI

JESSICA FRANZETTI

Also Present:

Isabel Loftus, Paralegal Specialist (USAO)

Phineas Santello, Paralegal Specialist (USAO)

Richard Kasman, Paralegal Specialist (Crowell & Moring)

1 (Case called)

2 MR. COYLE: Good morning, your Honor.

3 Jeff Coyle, Katherine Cheng and Alexandra Rothman, for
4 the government. Joined by Phineas Santello and Isabel Loftus,
5 who are paralegals in our office.

6 THE COURT: I think I've corrected you on this before.
7 They're paralegal specialists.

8 Thank you. Good morning.

9 MR. CURRIE: Good morning, your Honor. Kelly Currie,
10 Glen McGorty, Jessica Franzetti and Danielle Giffuni, for Mr.
11 Wells. Also joining us is Richard Kasman, who is a trial
12 specialist in our office.

13 THE COURT: Trial specialist? I take it they treat
14 you well, so.

15 Okay. Please be seated. Good morning everyone.

16 So the jury panel will be ready for us to start
17 picking the jury in 15 minutes. So let's deal with everything
18 else that we need to deal with before that.

19 First, with respect to the fact that Mr. Wells is
20 wearing his prison garb, this was his choice but I think that
21 when we do the voir dire and I ask defense counsel to introduce
22 themselves and their client, you may just want to say something
23 about he's in prison garb as was his choice or something like
24 that, so that the jury is not left wondering about that.

25 Secondly, with respect to the motions in limine filed

1 by both sides, with respect to the defendant's motion to
2 exclude Mr. Wells' involvement in alleged frauds on JP Morgan
3 between 2011 and the start of the alleged conspiracy in 2017,
4 the government indicates that it will not be offering the
5 sentiments on its case in chief. So the motion is granted on
6 that basis. Now, this doesn't mean of course that if the
7 defense opens the door to cross-examination or the defendant
8 takes the stand, that this may not at that point become
9 admissible but at least for now it will be excluded.

10 Secondly, with respect to the government's motion to
11 remit the defendant's participation in a so-called instant
12 credit scheme which he allegedly participated as part of his
13 course of business with the person referred to in the papers
14 referred to as CC3, I am going to admit that evidence firstly
15 because I think it is part of THE overall evidence or
16 inextricably intertwined with the conspiracy and also that it
17 will be admissible under Section 404(b) of the Federal Rules of
18 Evidence.

19 However, I'm making that ruling contingent on the
20 government's representation that this will come in through
21 CC3's testimony and will relate to events that occurred during
22 the conspiratorial period AND that the specific events referred
23 to in this allege scheme occupied only approximately one month.
24 If it were to become something much more sensitive than that, I
25 would reconsider the ruling.

1 Third, with respect to evidence that Mr. Wells was
2 arrested in Rye Brook, New York, for cashing or attempting to
3 cash fraudulent checks at M&T Bank branches, the government
4 argues that this is part of the overall conspiracy and
5 certainly, it is not precluded by the wording of the indictment
6 which I will have to check in connection with this motion. So,
7 I will admit that evidence. If defense counsel wants some sort
8 of jury instruction when it comes in let me know at that time.

9 Next and finally, with respect to the government's
10 motion to exclude evidence of the relationship between Faith
11 Brewster and Detective Spell, I think it's almost impossible to
12 rule on that at this time. It will be highly dependent on
13 whether the door is opened to the government's direct testimony
14 of various witnesses or whether it logically should come in as
15 part of cross. Defense has said they won't refer to it in
16 their opening. I will hold them to that. If and when the
17 defense believes the door has been opened or that it otherwise
18 becomes admissible you should approach the side bar before you
19 put any question about it and we'll deal with it then.

20 All right. Turning to scheduling, we will sit most
21 days from 9:30 to 4:00 with a midmorning break, lunch between
22 1:00 and 2:00 and a brief afternoon break. There may be days
23 when that will be slightly altered depending on other things I
24 have, but I'll let you always know at least the night before.

25 We will not, however, sit this Thursday and Friday

1 because I will be giving speeches in Washington D.C. on
2 Thursday in Minneapolis, Minnesota on Friday. So, I won't be
3 around. In terms of next week, from everything I have seen
4 this case probably can go to the jury on Wednesday or Thursday
5 but I could be wrong. But I think in an excess of caution and
6 given that we won't be able to sit this Thursday and Friday, I
7 think we will sit on Monday and that's a Jewish holiday. When
8 we're selecting the jury I'll ask the jury if any of them has a
9 problem with that and if they do, they'll be excused. But I do
10 think we have to sit on Monday.

11 So, any question about the schedule?

12 MS. ROTHMAN: Your Honor, with respect to sitting on
13 Monday, I think it's the government's view that the jury should
14 be selected without any regard to whether there's a conflict on
15 Monday. It seems somewhat unfair to strike every juror who
16 observes the Yom Kippur holiday. And so --

17 THE COURT: What are you going to do when someone is
18 selected and then they say "oh, I can't come in Monday cause
19 I'm going to be in temple"?

20 MS. ROTHMAN: Well then, I don't think we should,
21 respectfully, I don't think we should sit on Monday.

22 THE COURT: Well, here's the problem you face. I am
23 leaving on Sunday a week to give a speech in London. Now, I
24 was planning in a moment of foolishness to stay there a few
25 days but I could turn around and come back, but I was hoping

1 that we could complete the trial before I go to London and I
2 think Monday is an important part of that plan.

3 MS. ROTHMAN: I will say from the government's
4 perspective, we intend if we don't sit on Monday, we intend to
5 rest on Tuesday, likely.

6 THE COURT: Okay. That is more in accordance with --

7 MS. ROTHMAN: I'll just say subject to
8 cross-examination, obviously.

9 THE COURT: Yeah, well, all right. The only other day
10 on that representation -- I'm happy not to sit on Monday -- is
11 that it will mean that they'll have a break of Thursday,
12 Friday, Saturday, Sunday, Monday but I don't think -- if you
13 follow state court trials you will know that's a short break
14 compared to what's going on in state court.

15 MS. ROTHMAN: Yeah.

16 THE COURT: Okay. So unless defense counsel has any
17 problems, we will not sit on Monday.

18 MR. CURRIE: No objection.

19 THE COURT: In terms of jury selection, as some of you
20 may already know, I use the old jury box method. So we will
21 call up initially 12 persons randomly selected. I'll question
22 them for cause. Some of them may be replaced. Then counsel
23 will have peremptory challenges, six for the government and for
24 the defense. We do this in rounds, six rounds, and the first
25 four rounds, two challenges for defense, one challenge for the

1 government. The last two rounds it's one and one. If you
2 don't exercise your challenge on a particular round but the
3 other side does, then you simply lose that challenge but you
4 don't lose your remaining challenges. But if both sides waive
5 on a given round, then we have a jury.

6 Any questions about any of that?

7 MR. CURRIE: No, your Honor.

8 MS. ROTHMAN: No.

9 THE COURT: So, although this is probably unnecessary,
10 I think we need to select three alternates in an excess of
11 caution and given the long break, things could happen. So
12 after we've selected the main jury we'll select three
13 alternates with one round of challenges and that one round, one
14 for the government, two for the defense.

15 Okay. How long does the government want for opening
16 statement?

17 MR. COYLE: Less than ten minutes, your Honor.

18 THE COURT: Defense?

19 MR. CURRIE: Same, your Honor.

20 THE COURT: Very good. All right.

21 MR. MCGORTY: Your Honor, I apologize to interrupt.

22 Mr. Wells has just advised me that he does not wish us to
23 proceed as his counsel. Specifically, he asked me to indicate
24 to the Court, I believe he understands the conflict waiver from
25 yesterday.

1 THE COURT: So --

2 MR. MCGORTY: Just to lay it out for the record. He
3 understands that we are able to cross and attack the JP Morgan
4 case, but he does not agree, as we don't agree with his theory
5 on how to do that and what to do that about. So he wishes for
6 no one to represent him.

7 THE COURT: Mr. Wells, at this point because we are
8 going forward with the trial today, you have two choices. You
9 can either continue with counsel, counsel who is here or you
10 can represent yourself pro se. But that's the only choices you
11 have. There's some case law that says you don't even have the
12 second choice that at this point you can't suddenly say, oh,
13 having previously decided I didn't want to go pro se, I now
14 will. But if you want to go pro se, I'll at least consider
15 that, but that is the only choice. I am not going to appoint
16 new counsel.

17 THE DEFENDANT: Yesterday you said I could get new
18 counsel to cross-examine Chase to ask them questions.

19 THE COURT: No, I didn't say that. Let's get the
20 record straight. I suggested that current counsel should be
21 free to ask certain questions which I put on the record which
22 were favorable to your position but those were set forth
23 specifically in the transcript. We can look at the transcript
24 and see what they are. They're not saying they won't put
25 forward those questions if they are otherwise appropriate. Of

1 course they have to meet the rules of evidence. But they're
2 saying that your overall defense, which you articulated
3 yesterday about how there was a preexisting relationship
4 between Detective Spell and Ms. Brewster and how that impacted
5 what was presented to the grand jury, is not going to be
6 allowed. I've ruled on that repeatedly.

7 But that doesn't mean, for example, as you just heard
8 me say a few minutes ago, I'm not at this point either
9 admitting or precluding questions about the relationship
10 between Detective Spell and Ms. Brewster. It depends how the
11 government proceeds and it depends how the cross-examination is
12 couched. And I was very explicit in saying that I can't rule
13 on that in advance, that there might be situations in which the
14 door would be opened to that but there might not and I'll just
15 have to take it one question at a time.

16 THE DEFENDANT: Right.

17 THE COURT: So, they're not, they haven't remotely
18 suggested that they wouldn't put questions about that if they
19 were permitted to do. The question will be if they are
20 permitted to do. And as I again told them just give five
21 minutes ago, when that comes up, they have to approach the side
22 bar so I can rule at that time whether it's permissible or not.

23 THE DEFENDANT: From speaking with him and from
24 yesterday I was trying to understand, as I've said on the
25 record, whatever relationship they had I don't, that's between

1 them two. I was asking him, regardless of Faith Brewster and
2 Detective Spell, I was asking him when you cross-examine the
3 Chase Bank investigator, I would like to know how does this
4 information relate back to me and he hasn't given me a concrete
5 answer.

6 THE COURT: Well, I don't want to interfere with your
7 conversation which are privileged between you and your counsel,
8 but I assume that defense counsel is going to cross the Chase
9 witnesses about what's the basis for their claim that it was
10 you that they were making these disclosures to or something
11 like that.

12 Am I wrong about that?

13 MR. MCGORTY: Your Honor, you aren't wrong about what
14 we would do. Your Honor, we don't expect that the government
15 can speak for themselves, but we don't expect based on the
16 evidence and the 3500 that JP Morgan's witness is going to
17 testify about anything other than the existence of the fraud
18 within the bank. We may try and challenge that. But that's
19 not about Mr. Wells' involvement.

20 THE COURT: You don't think even they won't point to
21 Mr. Wells.

22 THE DEFENDANT: Exactly. That's what I'm saying,
23 Judge Rakoff.

24 THE COURT: Wait a minute. The point, Mr. Wells, is
25 this. I understand that your defense includes your belief that

1 they cannot, these witnesses cannot be connected up to you. If
2 the government on their direct doesn't try to connect it up to
3 you through those witnesses, then there's nothing to cross
4 about on that issue. If they do, I assume there will be cross
5 on that issue. Maybe -- I don't want to pursue this very long
6 because we want to pick the jury. Maybe the government can
7 give me a hint of what a typical witness might say.

8 MS. CHENG: Yes, your Honor. We were planning to
9 raise this with you as well. We do not expect the JP Morgan
10 investigator to testify about the link between Ms. Brewster and
11 defendant, which is based on hearsay. However, we were
12 planning to elicit the fact that during the JPMorgan Chase
13 investigator's interview of Ms. Brewster, Ms. Brewster pulled
14 up her phone and provided a photograph from her phone to give
15 to the JPMorgan Chase investigator, and we would ask to admit
16 that photograph which is a photograph of the defendant.

17 And so we understand your ruling that you can't rule
18 on the admissibility of the relationship. If you believe that
19 this would open the door to that relationship, then we would
20 not seek to admit just the photograph, but that's the extent --

21 THE COURT: All right. Well, that's a good example of
22 the situations that may come up. If, for example, Mr. Wells
23 they don't admit the photograph, there's nothing to cross on
24 that subject. If they seek to admit the photograph and I rule
25 that that opens the door, then there's plenty that your counsel

1 can bring out. And if I say it doesn't open the door, then it
2 can't. So, this is a good example of how we can't deal with
3 this in the abstract. We have to wait till the exact question
4 is put.

5 But here is the question for you and I don't want to
6 take any further time. You need to tell me right now do you
7 want to proceed pro se or do you want to proceed what your
8 current counsel?

9 THE DEFENDANT: That's what I'm trying to clarify
10 right now.

11 THE COURT: I want an answer. I'm tired of speeches
12 from you Mr. Wells. What's the answer; yes or no?

13 THE DEFENDANT: I would like new counsel.

14 THE COURT: You are not getting new counsel.

15 THE DEFENDANT: I don't have none of your law or
16 capacity to represent myself so I will need counsel, cause if
17 they can provide a picture, then I should be able to
18 cross-examine that Chase investigator. I want to know when
19 Faith Brewster was terminated. There's a lot of questions to
20 be asked. How does this bank information result to the --
21 that's all I want to know. How does that reflect back to me.
22 I don't care about the sexual affair. I don't care about that.
23 What happened at that JP Morgan Chase Bank, I want to know how
24 does that come back to me. I have been in here for three years
25 asking the same question. That's all I want to know. I don't

1 care about their sex affair. I don't care if they got married.
2 What happened at Chase Bank and how does it involve Laurell
3 Wells? That's all I want to know.

4 THE COURT: So, the legal question is whether you want
5 to represent yourself.

6 THE DEFENDANT: I do not.

7 THE COURT: Okay. I'm not going to appoint new
8 counsel. So, we'll continue with current counsel.

9 Mr. Wells, I have understood from day one -- that is
10 why I've spent so much time in conversations with you and held
11 hearings and all like that -- that it's your position that you
12 were not connected to what with the government says you were
13 connected to. So, of course, your counsel is going to, within
14 the rules of evidence, get into that. But there are many ways
15 to get into it. If a witness doesn't connect you, smart
16 counsel won't say, now let's talk about whether there are any
17 connections between you and Mr. Wells. That would be stupid
18 because they already have what they need to make the argument
19 that there's no connection because it wasn't brought out on
20 direct. So that's why we need to take it one step at a time.
21 But I have no doubt that your counsel -- and they can confirm
22 this or deny it -- are going to maintain through their
23 presentation that you are not accurately accused. True?

24 MR. CURRIE: That's correct, judge.

25 THE COURT: And you have very experienced counsel. I

1 wish you would give them a break.

2 THE DEFENDANT: Your Honor, you said that. Since they
3 got on my team I haven't made bail. Nothing has worked in my
4 favor and this is supposed to be a great team.

5 THE COURT: The person you need to blame for that is
6 me and more generally the law. They have presented every
7 argument that the law permits and they've presented it
8 extremely well. But unfortunately for you, in the end the
9 government has persuaded me that you're wrong on the legal
10 fronts. The jury not me will denied the factual points and you
11 will operating in a clean slate. You'll hear me tell the jury
12 right at the very beginning and again at several times during
13 the trial that you begin with a clean slate. You are presumed
14 innocent, that this is a bedrock principle of our law and that
15 you can only be convicted if and only if they find you are
16 guilty beyond a reasonable doubt. They're going to be the
17 judges of that, not me.

18 Okay. Let's get the panel up.

19 (Recess)

20 THE COURT: The government had something they wanted
21 it to raise?

22 MR. MCGORTY: Your Honor, so after you left, Mr. Wells
23 explained to me a little bit of what he was trying to
24 communicate with you. I'm going to just raise it with your
25 Honor. We're not endorsing this view. He is suggesting or he

specifically reiterated he does not trust us or our law firm. But more to the point, your Honor, he says he referenced the conflict waiver of yesterday and he said he understood that the plea deal or to try to plead guilty, he had to waive the conflict. He couldn't plead guilty without a waiver of conflict. He said that was the purpose of him waiving the conflict yesterday. He is saying he never wanted us to represent him at trial. He could articulate that better than me but --

THE DEFENDANT: You nailed it.

THE COURT: Mr. Wells, the record will speak for itself, but my recollection is that after defense counsel raised the point that the conflict was not as dramatic in terms of a plea as it might be in terms of the trial, I rejected that and said specifically, now we're going to consider it across the board.

Having said that just this morning, Mr. Wells said to me just a few minutes ago that he didn't care about the conflict. He didn't think it was of any importance. what he was upset about was his view that defense counsel wasn't going to present what he thought he ought to present and it had nothing to do with the question of the cross-examining Chase employees and he said all that to me -- and even gestured as he said it -- that he didn't care about, he said it's all between them and I don't care. So I don't understand his current

1 application.

2 MR. MCGORTY: Your Honor, just to be clear, that
3 reference about not caring was about the relationship between
4 Spell and Faith Brewster. Unfortunately, he has been
5 consistent on a belief that we are not going to cross examine
6 JP Morgan the way he wants us to and as aggressively as he
7 thinks we should. And in our expert opinion or experienced
8 opinion we related to him why we don't think it's appropriate.
9 He is saying, just so the record is clear -- he could speak for
10 himself -- he said --

11 THE COURT: Let's hear from him.

12 So, Mr. Wells, we went through yesterday whether or
13 not you wanted to waive, give up any claim that the fact that
14 your lawyer's firm had represented Chase would be a problem in
15 their cross-examining the Chase employees, and you said it was
16 not a problem. In fact, if I recall correctly, you said that
17 under oath.

18 THE DEFENDANT: Yesterday he said --

19 THE COURT: No. No. So, now you are taking a
20 different position?

21 THE DEFENDANT: Not a different position. He said
22 when I came into the courtroom that, oh, we can cross-examine
23 Chase but just not the way you want to. I'm confused. What
24 does that mean?

25 THE COURT: I'm not confused cause he said it many

1 times.

2 THE DEFENDANT: I don't trust this firm. So --

3 THE COURT: Well --

4 THE DEFENDANT: On the record, I don't trust this
5 firm. I do not wish to move forward to trial with this firm.
6 I would like a firm that will ask the questions directly, how
7 does this information tie back to Laurell Wells? That's what I
8 want to know. How does this information -- I don't know who
9 uses this information.

10 THE COURT: So, you can have a thousand firms and if I
11 rule that that's not admissible, it's not going to be admitted.

12 THE DEFENDANT: So then I'm lost before I even
13 started. It's already determined.

14 THE COURT: No. Mr. Wells, this Court has extended
15 you every conceivable courtesy and more than that, well beyond
16 what the law requires. Because when all is said and done,
17 Mr. Wells, I continue to feel some sympathy for you and I wish
18 you weren't constantly shooting yourself in the foot. You're a
19 person of intelligence. You are a person who has strong
20 beliefs but sometimes those beliefs don't accord with the law.
21 And you think that just because you feel strongly about a
22 matter that your counsel, whoever they may be, can break the
23 law and put questions that are not permitted, and that's not
24 the law.

25 So really you put them in a very awkward position.

1 They want to be as great a help to you as they possibly can.
 2 But what they are not willing to do is break their oath to
 3 abide by the law. And when you ask them to ask questions that
 4 the law does not permit and that I've indicated that the law
 5 does not permit, then you're asking them to break the law and
 6 they are not willing to do that and I support them totally in
 7 that respect.

8 That's going to be true whether you get one new
 9 counsel, five thousand new counsel or a million new counsel.
 10 They all have to abide by the law. And if you keep asking
 11 them, because you are so convinced of your view, to break the
 12 law and ask questions that the law doesn't permit them to ask,
 13 you're just shooting yourself in the foot, as I indicated
 14 previously.

15 Let's go over this one more time. I think you have
 16 told me repeatedly that you don't want to proceed pro se,
 17 correct?

18 THE DEFENDANT: Yes.

19 THE COURT: Okay. You're now saying that you waive
 20 the conflict. You understand what I mean by "waive the
 21 conflict"? You gave up any claim that they were conflicted in
 22 representing you because you thought that was just in
 23 connection with taking a plea.

24 Do I understand that's your current position?

25 THE DEFENDANT: Yes.

1 THE COURT: Why would it make any difference if it was
2 in connection with taking a plea or otherwise?

3 THE DEFENDANT: Because he said that, well, if we
4 represent you, we can't cross-examine the --

5 Don't do that. You know what you said. You said you
6 can't cross-examine Chase cause our firm represents them. This
7 is what you said even at the hearing. Before the hearing you
8 came back there and said oh, you have to sign a waiver. No.
9 This is the person that wrote the report. I have a right to
10 ask these questions and you are saying --

11 THE COURT: No, no. Your counsel has never ever said
12 that.

13 THE DEFENDANT: I'm getting different stories. I'm
14 telling you, your Honor, what is going on behind closed doors
15 is not what is going on in front of me.

16 THE COURT: If you -- just to show you what you are
17 asking for -- if I appointed new counsel -- this would be your
18 fifth. The trial of this case would probably have to be put
19 off at least six months because I have a very, very complicated
20 and hectic trial schedule. Do you really want that?

21 THE DEFENDANT: As long as we get the truth I don't
22 care what they do. I want to get to the bottom of this now.

23 THE COURT: What do you mean?

24 THE DEFENDANT: I want to get the truth. Where did
25 this Chase information come from? Why am I being accused of a

1 crime that happened somewhere has nothing to do with me. I've
2 been asking for dialogue for three years. Where is this
3 conversation between me and this woman? Where is this
4 information that was used? How did this come to me?

5 THE COURT: So, that is going to be what the
6 government's witnesses will say and your counsel, contrary to
7 what you just said, has repeatedly represented that with the
8 waiver that you gave, they are prepared to vigorously
9 cross-examine those witnesses. They just don't feel they can
10 in cross-examining they can break the law and ask questions
11 that the Court doesn't permit.

12 Do you want them to break the law?

13 THE DEFENDANT: I do not, no, sir. If it takes six
14 months, let's do it. I'm doing but hard time. I'm all right.

15 THE COURT: So, let me ask the government, we can
16 either -- I think there is at least an argument -- I don't have
17 the transcript from yesterday -- that the waiver was placed by
18 defense counsel in the context of the plea and not necessarily
19 despite the Court's best efforts to broaden to the context of
20 the trial. So, assuming for the sake of argument that is the
21 situation, then do I not have to appoint new counsel to
22 represent even if it means, as the defendant recognizes, a
23 six-month delay?

24 MS. ROTHMAN: Your Honor, a few points. First,
25 respectfully, we don't think there's a conflict here. We think

1 that the Court chose to hold a Curcio in an abundance of
2 caution, but given the limited scope of the investigator's
3 testimony, the fact that defense counsel's representation of JP
4 Morgan is entirely unrelated to the narrow focus of her
5 testimony today, we think the Court could have found no
6 conflict, no Curcio, and just proceeded. And I think the Court
7 could still do that if it chose to.

8 What I don't actually hear from the defendant in what
9 he is saying is if the Court decides to proceed with a Curcio,
10 a refusal to waive a conflict purported conflict, what I still
11 hear is a disagreement over trial strategy. Simply, the
12 defendant wants certain questions posed to the JP Morgan
13 investigator. Defense counsel is saying we're not going to ask
14 those not because of our relationship with JP Morgan but
15 because we don't think they're proper questions. So, I don't
16 think the Court needs to take this trial six months, eight
17 months to find ourselves in the same situation where defense
18 counsel is likely going to say, we are not going to ask those
19 questions because they're not proper questions.

20 And I think if the Court wanted to, it could do
21 another Curcio. I don't think it has to. I think the Court
22 can proceed as we are right now. And so I don't think an
23 adjournment is appropriate at this point when trial has been
24 adjourned several times, the defendant has had several changes
25 of counsel and at this point the parties are ready to proceed

1 to trial.

2 THE COURT: So let me ask defense counsel since you're
3 on your feet, it is true that I undertook the Curcio hearing
4 just because I thought that was the safer course. But why is
5 there a trial?

6 MR. MCGORTY: Your Honor, again, we received guidance
7 from our general counsel at our law firm who does this all the
8 time, and he echoed what we believe which is that there's no
9 purer conflict than cross-examining the client on the stand.
10 And I think it was appropriate for there to be a waiver. And I
11 think frankly personally it is in Mr. Wells's interest to
12 continue as his counsel -- he waived. However, the record
13 suggested that the waiver, and I know from what he said to us
14 that he was waiving cause he had to plead guilty. That said,
15 your Honor, just to the government's point, there is no
16 dispute. There is conflict. The record cannot be made. If
17 the waiver is sufficient as it is, your Honor, Rules of
18 Evidence find that there has to be a conflict waiver from both
19 of our clients.

20 Here is the reason. The conflict goes to the heart of
21 what Mr. Wells wants with his representation. He thinks he
22 wants the JP Morgan cross a particular way. A particular way.
23 If he doesn't waive the conflict that he will be able to argue
24 on appeal that we unethically represented him by being
25 conflicted counsel pulling our punches on cross. We have a

1 waiver from JP Morgan which let's us cross in the first place
2 but without a waiver from Mr. Wells he is stuck with lawyers
3 who he says he doesn't trust in part because of this issue to
4 cross-examine our client on something that he believes is
5 critical to his defense.

6 I don't know how the government could say there is no
7 conflict. It's a waivable one. We acquired a waiver from JP
8 Morgan. We asked for a Curcio hearing because we thought Mr.
9 Wells needed one. He could have a Curcio counsel appointed if
10 he needed more -- I think your Honor's allocution of him was
11 sufficient on its face that he didn't need counsel. But he's
12 saying today and again, I understand everyone's frustration and
13 I do think he should stick with us and we should go forward in
14 his interest, but he is saying on the record, I didn't waive
15 the conflict for you guys to try this case. I waived the
16 conflict because you told me I had to waive the conflict to
17 plea.

18 Just to be clear, while I think we have a disagreement
19 about the approach which is never a reason for you to relieve
20 us, right, another lawyer who has the same problem Mr. Wells
21 won't get relieved because of a conflict issue, a separate
22 issue. I am as frustrated as everyone about the process but
23 the record has to be clear on that because there is a conflict.

24 THE COURT: Well, did and I order --

25 Linda, tell the jury clerk that regretfully we have to

1 call everybody back in about a half hour so she can take the
2 jurors back down to their room. We will have a resolution of
3 this within a half hour. I'll wait for the court reporter then
4 to provide me with yesterday's transcript. The only part I
5 need is the Curcio.

6 I'll look at it and I think the question is this. I
7 am persuaded that there has to be a waiver of the conflict.
8 What I am less clear about is whether the waiver that was given
9 yesterday included a waiver for all purposes or just for a
10 guilty plea. I do remember questioning the narrowness of the
11 defense approach, but on the other hand I think I may have said
12 something during the hearing itself about how? The context of
13 a guilty plea is even less of a problem, but I want to look at
14 it.

15 So we'll break for about 15 minutes. I'll look at it.
16 We'll come back and I'll rule one way or the other. I don't
17 think the government's suggestion to have a new Curcio hearing
18 makes any sense because that doesn't take account of what I
19 would call Mr. Wells' psychology. So I think we should just
20 look at what was done yesterday and that's still binding upon
21 Mr. Wells and everyone else.

22 MR. MCGORTY: One point to raise. Your Honor said
23 earlier that you believed you had questioned him about,
24 specifically, about cross-examining witnesses. We think that
25 would be a relevant factor. I don't remember whether it

1 happened or not. If you did we think that probably would be
2 dispositive.

3 THE COURT: All right. So let me see what the
4 transcript says. Then we'll see if we go forward or not.
5 Okay.

6 (Recess)

7 (Continued on next page)

1 THE COURT: Before I address the *Curcio* issue, I
2 noticed in the government's listing of its witnesses yesterday
3 that, unless I missed it, there is only one Chase employee who
4 is being called as a witness. Is that right?

5 MS. ROTHMAN: That's correct.

6 THE COURT: That's the investigator.

7 MS. ROTHMAN: Yes. Ms. Jesurum.

8 THE COURT: What is she going to say?

9 MS. ROTHMAN: She is going to testify very briefly to
10 the fact that she learned of several flagged transactions at JP
11 Morgan. She gathered the records. She identified they were
12 all conducted by the same bank teller, Faith Brewster. She
13 pulled the records, interviewed Faith Brewster, Ms. Brewster
14 was terminated. And during the course of that interview she
15 obtained from Ms. Brewster's cell phone a photograph of the
16 defendant. That's it.

17 THE DEFENDANT: Not the phone number.

18 THE COURT: Mr. Wells.

19 THE DEFENDANT: I'm sorry.

20 THE COURT: I am just wondering, other than the last
21 item, which might open the door to the relationship, why do you
22 even need that testimony? Why is it particularly material?

23 MS. ROTHMAN: Well, your Honor, it's corroborative of
24 the testimony of Ms. Robbins, who was one of the defendant's
25 coconspirators.

1 THE COURT: I understand it might be corroborative.

2 MS. ROTHMAN: And there will be a victim who will
3 testify that she was one of the accounts the defendant
4 fraudulently cashed a check into, and you'll also see from the
5 investigator's testimony that that was one of the accounts she
6 pulled as part of their review of fraudulent transactions.

7 THE COURT: It seems to me that one way to resolve
8 this would be if the government wished, it's totally the
9 government's choice, if you wish not to call that investigator,
10 then there is no conflict issue at all because there is no
11 Chase employee. It then disappears. That's one possibility.

12 Turning to the *Curcio* hearing itself, looking at the
13 transcript from yesterday afternoon, there was the statement by
14 Mr. McGorty that I think was perhaps, in hindsight, a little
15 unfortunate. This is on page 2 beginning line 11.

16 Your Honor, before you proceed, the *Curcio* is premised
17 on, unless Mr. Wells has changed his mind, on his decision to
18 plead guilty. I don't know if he wants to address the Court on
19 his ultimate decision, but I want him to have the opportunity
20 to indicate to the Court whether he is going to plead guilty or
21 not. And if he is going to plead guilty, obviously, we need a
22 *Curcio*. If he is not, then that's a different question about
23 the conflict.

24 And then the Court stated on page 2 at line 23: No,
25 no. Here is the -- I'm actually not sure that the *Curcio*

1 hearing has to make this limitation. But just so that you are
2 clear, the supposed conflict arises from the fact that the firm
3 of which the defense counsel or lawyers previously represented
4 Chase Bank in some unrelated matters. If the case went to
5 trial -- and then the defendant interrupts to say right. The
6 Court continues. This is now at page 3, line 5: They would
7 have to cross-examine -- if they were your attorneys, they
8 would have to cross-examine the Chase employees, and
9 theoretically they might be less assiduous in doing so because
10 of the firm's representation of Chase in other matters; I
11 guess, to be frank, a very unlikely hypothetical. But in any
12 event, Chase has already said they don't care if their
13 witnesses are cross-examined by these attorneys, and then the
14 question is whether you care.

15 "THE DEFENDANT: OK.

16 "THE COURT: What they were just saying was, it
17 becomes much less of an issue, if an issue at all, if you're
18 pleading guilty because then there won't be any witnesses.
19 It's conceivable that the probation officer preparing the
20 presentence report might interview the Chase people or
21 whatever, but it's not like there are going to be witnesses on
22 the stand before a jury testifying against you. Nevertheless,
23 even if you intend to plead guilty, you can't go forward with
24 these lawyers unless you assure me that you have no problem
25 going forward with these lawyers and that's the whole point.

1 Do you understand?

2 The defendant says: I understand the aspect. Just
3 another piece of clarity since we are here. Moving forward to
4 trial, the question is, what am I fighting at trial? What
5 would be used against me? What am I fighting?

6 Then there is this long interchange in which
7 eventually I asked the government to say who their witnesses
8 were, and they listed a bunch of witnesses of whom only one was
9 a Chase employee.

10 Now, going on, we then got into the more formal *Curcio*
11 hearing beginning at page 7, and there the Court broadened the
12 questioning considerably. This is at line 12:

13 "THE COURT: You are aware, are you not, that their
14 law firm has represented JP Morgan Chase in various matters
15 unrelated to your matter. Are you aware of that?

16 "THE DEFENDANT: Yes.

17 "THE COURT: Now, you're entitled to counsel who has
18 only your interests at heart, and theoretically they could be
19 influenced by the fact that their firm represents Chase, but
20 they have already received agreement from Chase that they can
21 go after the Chase witnesses.

22 Do you understand that?

23 "THE DEFENDANT: Yes.

24 "THE COURT: Do you understand that it's up to you,
25 therefore, to decide whether or not to allow them to continue

1 as your attorneys, notwithstanding this theoretical conflict?

2 Do you understand?

3 "THE DEFENDANT: Yes.

4 "THE COURT: Are you prepared to go ahead and have
5 them represent you going forward?

6 "THE DEFENDANT: Yes.

7 "THE COURT: Do you want to have me appoint an
8 independent lawyer to consult with this conflict question or
9 are you prepared to go forward?

10 "THE DEFENDANT: I am prepared to go forward."

11 I think if we were only looking at that last part of
12 testimony, that formal *Curcio* questioning, there was a total
13 waiver in all respects.

14 The only thing that gives me pause was the prelude in
15 which the defense counsel attempted to narrow or at least, as I
16 interpreted it, place a narrower spin on the waiver. Although
17 I didn't adopt that and specifically declined to adopt it, I
18 did explain to the defendant that that's what his counsel was
19 saying about it.

20 Also, all of this was in the context of
21 cross-examining Chase witnesses, whereas the argument might be
22 made that there was -- even without a Chase witness, there was
23 still a conflict because the very fact of the representation of
24 Chase, which was in some sense a victim, could impact the
25 assiduousness of the waiver, the assiduousness of the

1 representation. Excuse me.

2 Let me hear what is the government's view, what is
3 defense counsel's view, what is Mr. Wells' view, and then I'll
4 rule.

5 MS. ROTHMAN: Your Honor, the government submits that
6 the *Curcio* that the Court conducted is more than sufficient to
7 inform the defendant of the potential conflict in this case and
8 that the defendant knowingly waived that conflict and that we
9 can proceed.

10 We don't think the Court's questioning was limited in
11 any way, the Court's questioning to the idea of the guilty
12 plea, and in fact the Court repeatedly mentioned the
13 possibility of Chase witnesses, which is really what the
14 question is here today, the ability for defense counsel to
15 adequately cross-examine one Chase investigator who has very
16 narrow testimony.

17 I will just note, we don't intend for the investigator
18 to offer the phone number for the defendant, any statements Ms.
19 Brewster made through the investigator. And perhaps, upon
20 hearing that, some of the concerns that the defendant may have
21 had are now ameliorated. Her testimony is so narrow and does
22 not improperly offer hearsay statements.

23 In light of that, we think there is no basis to reject
24 the *Curcio* from yesterday, no basis to find that we cannot
25 proceed to trial today, so I think the Court should find it was

1 sufficient, and we should get the jury in and we should start.

2 THE COURT: Let me hear from defense counsel.

3 MR. MCGORTY: Your Honor, briefly just on the last
4 point.

5 Counsel has raised arguments why ultimately if
6 Mr. Wells wanted to proceed to trial today, it may be wise for
7 him to waive this conflict. Our position, your Honor, based on
8 the *Curcio*, it is not a known waiver. Just for two points,
9 your Honor.

10 First, that preamble, it was unfortunate based on our
11 circumstances here that I said it, but I did say it
12 intentionally not to explain or limit the *Curcio*. I was
13 reflecting what was specifically communicated to me by my
14 client of what he wanted to do. I wasn't -- that wasn't for
15 me. I am articulating for the Court that he wants to waive the
16 conflict for the purposes of the plea.

17 All the talk about cross-examination in the preamble,
18 your Honor, if anything, projected to Mr. Wells the difference
19 between the circumstances of going to trial versus the
20 circumstances of pleading guilty. He specifically said, your
21 Honor, that it's unlikely that the probation officer is going
22 to call or interview a Chase witness, but that it could give
23 rise to that concern. Absent that, it is a different scenario
24 than if we are going to trial. That's what was communicated.

25 And in the actual *Curcio*, while reading it, without

1 knowing the context, I think it's sufficient and a broad waiver
2 for all purposes. But we know going into it, your Honor, that
3 he was waiving the conflict for the purposes of pleading
4 guilty, and specifically there wasn't a question -- you asked
5 the government if they had any questions. They didn't. We
6 would not have had either had you asked us.

7 But the additional question that could have been asked
8 is, if you do not plead guilty and proceed to trial, you
9 understand you are waiving this conflict as to these lawyers
10 who will be able to cross-examine these witnesses, and you will
11 not have a right to argue that they were conflicted, because
12 the concern on appeal is that he will say that whatever we do
13 with respect to this JP Morgan witness now, or even his ability
14 to call them on his own, is going to be -- we are going to be
15 pulling our punches because of the conflict.

16 I have no problem with him waiving the conflict, your
17 Honor. We can get going with the jury, as counsel suggests,
18 but it has to be a knowing waiver under the circumstances where
19 we are here today. And I think had he asked for independent
20 *Curcio* counsel yesterday, they would have told him all this in
21 detail.

22 THE COURT: He was made that offer and he said no.

23 MR. MCGORTY: No argument to that, your Honor.

24 But I do think it is because in his mind he didn't get
25 the clarification in the *Curcio*, saying this is for this

1 purpose and not the other. What I said at the beginning was
2 only because that's why he was waiving the *Curcio*, as were his
3 words.

4 THE COURT: OK.

5 Mr. Wells.

6 THE DEFENDANT: Just to touch a little bit about what
7 the prosecution said about Biviana Jesurum.

8 I am getting to the issues. Please stop trying to cut
9 me off.

10 As she just said, the testimony of Biviana Jesurum,
11 her testimony is based on that six-page confession, so she
12 cannot testify about something that was given to her because,
13 once again, if this was given, this is hearsay.

14 THE COURT: Let's take that as a good point.

15 THE DEFENDANT: Thank you.

16 THE COURT: If it's hearsay and doesn't fit within any
17 of the exceptions to the hearsay rule, then I will rule it
18 inadmissible. That has nothing to do with conflicts.

19 THE DEFENDANT: OK.

20 The other conflict, as far as like the Chase Bank,
21 Summer Robbins is not a Chase Bank witness. This is a
22 Detective Spell's witness. That right there is tainted. There
23 is no way -- this person's name is not in that six-page
24 confession. This is the Detective Spell witness. So is
25 Tran --

1 THE COURT: What do you mean, a Detective Spell
2 witness?

3 THE DEFENDANT: Detective Spell's witness is --

4 THE COURT: I understand what you mean. A witness is
5 a witness.

6 THE DEFENDANT: You said, as of yesterday, yesterday,
7 when we had the hearing yesterday, this name, Summer Robbins,
8 was brought up by the government, and I said: Wait. That's
9 not a Chase Bank witness. That's a Detective Spell witness.

10 THE COURT: This has been part of the problem. It
11 doesn't matter whether they first learned of a witness' name
12 through Detective Spell or through Chase or through the man on
13 the moon. What matters is what the witness is prepared to
14 testify to under oath.

15 THE DEFENDANT: I thought anything that came from
16 Detective Spell cannot be used, anything that came after Chase
17 Bank.

18 THE COURT: No, no, no. That's a different question.

19 The question is whether it opens the door to
20 cross-examination about the witness' relationship with
21 Detective Spell or how -- who she told whatever she said to.
22 That might or might not open the door. I haven't ruled on
23 that, as you know, but it's not -- someone doesn't just cease
24 to be a witness because the first time the government learned
25 about them was through someone who was tainted. That's not the

1 law.

2 Do you understand the distinction I'm making? If
3 someone came to the government's attention because someone with
4 a motive to pin it on you brought it to the government's
5 attention, that doesn't mean that the government can't call
6 that person to testify. What it might mean is, it might open
7 the door to some questions about Detective Spell. I haven't
8 ruled on that yet. You see the distinction? It doesn't
9 preclude calling the witness. It just precludes -- it just
10 creates a situation where maybe the cross-examination will be
11 broader than it otherwise would be.

12 Let me ask the government, assuming for the sake of
13 argument that my ruling would be materially affected by whether
14 or not you call that investigator, what is your view?

15 MS. ROTHMAN: Just so I understand what the Court is
16 saying -- again, this is complicated by the fact that what I
17 really hear is a strategic disagreement between defense counsel
18 and the defendant. But if what the Court is saying --

19 THE COURT: I agree with that.

20 And I also agree that cuts against appointing new
21 counsel in some respects because that's been an ongoing
22 problem. That's why Mr. Wells has had so many attorneys,
23 because as much as I have tried to explain things to him and
24 much as I admire that he is an intelligent person, he gets so
25 committed to his theories that he's unwilling to open his mind

1 to the possibility that some of them may not be legally
2 relevant.

3 I am at a loss as to how to communicate with you,
4 because I have tried so hard, and the reason I have tried so
5 hard is because you are a fellow human being. You deserve the
6 same respect as every human being has. But I am frustrated by
7 the fact that I can't seem to get across to you that certain
8 positions that you want your attorneys to take are legally not
9 permitted. I didn't make up the law. The law is there. But I
10 apply the law. And so much as you feel strongly about certain
11 issues, if they are not legally relevant, I am not going to let
12 them in.

13 Going back, though, to the government, I hear all you
14 are saying, but I still want an answer to my question.

15 MS. ROTHMAN: Just so I understand the Court's
16 question, what I think the Court is saying is, if I am inclined
17 to say I don't think the *Curcio* was good enough and, therefore,
18 I am going to kick this six months, would the government then
19 say we are not going to call the investigator so we can
20 proceed? Is that what the Court is saying?

21 THE COURT: What I'm saying -- you're as good as
22 Mr. Wells as putting the questions back to the Court.

23 MS. ROTHMAN: I don't know if I want that honor.

24 THE COURT: Here is what I think. I think the formal
25 part of the *Curcio* hearing was across the board. Nevertheless,

1 it had a context and the context was brought out in that
2 earlier colloquy.

3 And I think the reason I'm putting this question to
4 the government is that while I am still inclined to think that
5 the *Curcio* hearing was sufficient, I would feel more
6 comfortable if it became even less material, potentially
7 material. Because if there is no one from Chase to
8 cross-examine, then that's not perhaps technically the end of
9 the conflict, but it certainly goes to the weight of the
10 conflict.

11 MS. ROTHMAN: Here is what I can say, your Honor. We
12 do not intend to open on the Chase investigator in that we are
13 not going to refer to her by name in our opening, and in fact,
14 and Mr. Coyle can check, I don't even think the fact of the
15 investigation at Chase gets specifically mentioned in our
16 opening. There is a lot of bank fraud here at other banks, and
17 I think the Court will see, we don't get into specifics in the
18 opening.

19 We are prepared to proceed in light of the Court's, I
20 think, correct inclination. The *Curcio* was sufficient. I
21 think we want to talk a little bit internally if we ultimately
22 decide not to call her or perhaps can talk about a stipulation.
23 But, as we have said, her testimony, as we envision it, is so
24 narrow, without identifying the defendant by name, without
25 providing any information in the substance of that statement

1 that Ms. Brewster made, so I think that also reduces any
2 possible risk in light of just how narrow her testimony is and
3 how limited the grounds of potential cross-examination are for
4 this witness.

5 THE COURT: Let me hear from defense counsel. Before
6 you address the Court, let me ask you this. The ultimate
7 question in which a *Curcio* hearing is directed is not so much
8 related to specific witnesses. It is to whether or not you can
9 be totally devoted to your client's interests and whether he
10 has a reason to doubt your devotion to it.

11 On the first thing, I think there is no question
12 you're totally devoted to his interests. I think you have
13 proven that again and again and again during the course of your
14 representation.

15 I'm more concerned whether he doesn't have confidence
16 in any of his lawyers because he thinks he knows better.
17 That's been a problem from day one. But that kind of lack of
18 confidence is not a reason to get him a new attorney. I
19 predict that whatever attorney I get for him, he will find that
20 attorney inadequate. But, on the other hand, unlike that
21 general problem, he also has more objectively a possible
22 problem with having someone who nevertheless is linked to Chase
23 continue as his lawyer.

24 What do you say to all that?

25 MR. MCGORTY: Your Honor, just on the last point, that

1 is the only basis here for replacement of counsel because we do
2 not think -- to be clear on the record, strategic differences
3 has been the centerpiece of what we have been trying to explain
4 to him and ask the Court to help with. That's not the basis
5 for the problem here.

6 Whatever Mr. Wells' reasons are, it's kind of a black
7 and white binary issue. He needs to have a clear waiver of
8 this conflict. It's not as to -- it's a conflict, period.
9 It's not as to a particular witness.

10 The reason we think there is a conflict that arose is
11 not because of JP Morgan's status at a victim. It's because
12 the government has had to rely now on evidence coming through
13 JP Morgan in the form of an investigator, and, frankly, I am
14 not sure whether he would permit us to stipulate away testimony
15 because --

16 THE COURT: That's a good point. In some ways,
17 ironically, it is Detective Spell who put all of us in this
18 box.

19 MS. ROTHMAN: Could I just say on that, the
20 investigator's testimony stops before Detective Spell even gets
21 involved.

22 THE COURT: That's why I have told Mr. Wells
23 repeatedly that all the questions he thinks his counsel should
24 put are probably not going to be allowed, because, as his own
25 counsel recognizes and as anyone would recognize, the

1 involvement of Detective Spell postdated the fundamental issues
2 that gave rise to this prosecution.

3 MR. MCGORTY: Your Honor, on that point, absolutely
4 true, absolutely true. That's not our client's position. We
5 believe that's what the evidence states. It's not the absence
6 of Detective Spell that creates the conflict -- not the
7 conflict. That creates the dilemma that we are in that creates
8 the conflict. It's absence of Faith Brewster. The government
9 has decided strategically it is not going to call Faith
10 Brewster, understandably, that it does not want to open the
11 door to Detective Spell and their illicit relationship. As a
12 result, they are attempting to offer evidence both about the
13 investigation, which they always could have, but also through a
14 photograph that she gave him, which we think is objectionable,
15 but that's a secondary issue, to get that in through this
16 investigator. The reality is, your Honor, that was the
17 triggering event of this.

18 What has broadened now is our client's desire to have
19 an attorney that will attack JP Morgan in a broader way than we
20 think strategically is appropriate and, frankly, based on the
21 law as well, what we may be limited to do, any lawyer would be
22 limited to do.

23 It's not the limitations of the law that any lawyer
24 would be able to do. That's a fine argument that would never
25 prevail, no lawyer can do something. But when we are

1 strategically telling our client, that is not what you should,
2 and he's telling us, that's because you represent JP Morgan, I
3 don't trust you, I do not trust you or your firm. Then where
4 we are.

5 THE DEFENDANT: Because when it's all said and done,
6 we are moving forward with hearsay. Detective Spell can't
7 testify. Faith Brewster can't testify. Rosenman can't
8 testify.

9 As you just said, we are all here because of Detective
10 Spell's mess. So, once again, if they are not here to fight
11 for their own battle, how can we proceed with hearsay. If this
12 six-page document was given to Chase Bank, it's not just a
13 photo. Remember, it entailed a suspect's name, two phone
14 numbers, and the photo.

15 Once again, if you have this -- Biviana Jesurum on the
16 stand, that's hearsay. I am trying to get clarity. How can we
17 move forward.

18 THE COURT: Mr. Wells, you do not understand the
19 hearsay rule, clearly. I'm sorry. If someone testifies, as
20 numerous of the government witnesses are apparently going to
21 testify as to what they did and what happened to their
22 accounts, that's not hearsay. That's personal knowledge. You
23 don't understand the hearsay rule. I'm sorry.

24 I think the fundamental problem is that there was an
25 objective basis for someone in Mr. Wells' position to be

1 concerned, rightly or wrongly, about how assiduous his lawyers
2 would be in his defense, given the relationship of the firm to
3 Chase.

4 The fact of the matter is, they have been highly
5 assiduous in their defense. Mr. Wells, of course being
6 Mr. Wells, doesn't remotely understand how good his attorneys
7 have been for him, but that's because he's a stubborn person.

8 But because there was at least objectively an issue,
9 then the question becomes, was the *Curcio* waiver sufficiently
10 broad to eliminate that issue. He was free to waive anything
11 he wanted to. Did he waive this conflict or did he only waive
12 it in the context of, I'll waive it for purposes of the plea
13 but not otherwise. And I think that's what it still comes down
14 to.

15 There is the subsidiary issue of how material it is.
16 That's why I put the question about the witness to defense
17 counsel, because if the case doesn't involve any Chase
18 employee, that certainly should ease objectively some of the
19 concerns, but it's not the end of the question because Chase is
20 still involved.

21 Is there anything further the government wanted to
22 say?

23 MR. COYLE: Your Honor, we just want to put out there
24 that it seems like this is all borne from a misunderstanding,
25 that the reason the defendant doesn't want to waive is because

1 he wants to challenge what he deems to be the impermissible
2 hearsay offered through the statement of Faith Brewster. The
3 government is not offering that.

4 THE DEFENDANT: You're not using Biviana Jesurum. If
5 you are not using her, we can proceed. If you are not using
6 her, we can proceed.

7 MR. COYLE: We are calling Biviana Jesurum
8 specifically to establish that there was a teller named Faith
9 Brewster who was connected to fraudulent transactions. It does
10 not tie to the defendant.

11 THE DEFENDANT: Why am I here?

12 MR. COYLE: The government will present other evidence
13 to establish this case, but it seems like the whole fabric of
14 what this difference is about is a misunderstanding about what
15 the testimony will even be, and it sounds like, under that
16 understanding, the defendant has no problem with this.

17 THE DEFENDANT: You just said, on record, that you
18 will ask if fraud took place at the bank, and it doesn't
19 concern Mr. Wells. So if something took place at the bank and
20 it does not --

21 THE COURT: He didn't say that. Mr. Wells, that's not
22 what he said. What he said was that this particular witness
23 that you were concerned with was not tying it to you. That's a
24 different question. He wasn't saying that overall it wasn't
25 tied to you. They are going to call a whole bunch of other

1 witnesses who they say will show that it was tied to you and
2 they will be cross-examined and so forth. He was just talking
3 about one witness, so please don't overstate what he said.

4 Now my question is, given what he said about that one
5 witness, are you now prepared to have your counsel proceed to
6 trial?

7 THE DEFENDANT: Before we proceed, can you please
8 reiterate, clarify --

9 THE COURT: I'll let him do that.

10 MR. COYLE: Biviana Jesurum's testimony will not offer
11 hearsay statements.

12 THE DEFENDANT: Or the picture. Continue.

13 MR. COYLE: From Faith Brewster.

14 THE DEFENDANT: Or the picture. Or the picture. Say
15 it.

16 MR. COYLE: It will not give Mr. Wells' phone number.

17 THE COURT: If the picture is your only concern, I'm
18 inclined to rule out the picture anyway, because I think that
19 might open the door.

20 MR. COYLE: It won't include the picture. There will
21 be nothing tying that teller --

22 THE COURT: It won't include the picture. Are you now
23 prepared to go forward with your counsel giving their defense?

24 THE DEFENDANT: Yes.

25 MR. MCGORTY: Can I explain what the question is, your

1 Honor?

2 THE COURT: He just said yes. That was an unequivocal
3 yes. Let's get the jury panel. Let's get going.

4 MR. MCGORTY: Your Honor, that's fine. If you think
5 that's sufficient, I have no problem with that. We should make
6 clear what he said yes to.

7 THE COURT: What I understood, Mr. Wells, but correct
8 me if I'm wrong, is, as a result of what you have now heard
9 from the government about this particular witness, including
10 the Court's determination to keep the photograph out.

11 THE DEFENDANT: The phone number, the name.

12 THE COURT: He said they are not going to offer the
13 phone number and the name for this witness. We are not talking
14 about any other witness. And I'm saying that the witness also
15 can't offer the photograph.

16 With that knowledge, are you now prepared to have your
17 current counsel represent you at this trial and give up any
18 claims of conflict?

19 THE DEFENDANT: Yes.

20 THE COURT: Very good. Let's get the jury.

21 THE DEFENDANT: We don't have Biviana Jesurum.

22 THE COURT: Let's get the jury, please.

23 Maybe you guys don't need a break, but I do. We will
24 take a five-minute break at this point.

25 (Recess)

1 AFTERNOON SESSION

2 1:55 p.m.

3 THE COURT: We are missing one juror. I am not sure
4 what happened since they were all due back at 1:40. But we
5 will wait five more minutes and then if the juror is not here,
6 we will maybe seat an alternate in their place.

7 MS. ROTHMAN: Your Honor, while we wait, if I can
8 raise one small thing with respect to juror number 11. That
9 was the individual who said he knew a few members of the U.S.
10 Attorney's Office, including AUSA Rob Sobelman.

11 I did want to flag for the Court and for defense
12 counsel that I expect Mr. Sobelman to be in the courtroom
13 during various parts of the trial. He is the supervisor of the
14 unit in which this case was charged. There was no request to
15 strike that juror. We don't think there is a basis to do so.
16 But I did want to put that on the record, your Honor.

17 THE COURT: The supervisor, your supervisor, is
18 coming. Is that to intimidate you, make you nervous and
19 stressed out?

20 MS. ROTHMAN: He's not my supervisor, but he is for
21 Mr. Coyle and Ms. Cheng, your Honor.

22 THE COURT: I think it is unnecessary pressure, but
23 OK.

24 MR. MCGORTY: Your Honor, Mr. Wells asked me, despite
25 the peremptory conversation we had earlier, he does want that

1 individual as a juror because of that relationship, which was
2 clear on the record.

3 THE COURT: You had ten challenges to strike that
4 juror.

5 THE DEFENDANT: That was not clear.

6 THE COURT: Mr. Wells, now that the trial is underway,
7 I am not going to hear you volunteering anything. If you want
8 to speak, speak to your attorney, who will bring it to my
9 attention. Any more from you and I will take action you won't
10 care for.

11 MR. MCGORTY: Your Honor, the only other thing I would
12 add on that point, the fact that juror number 11 had
13 friendships in the U.S. Attorney's Office was clear. The new
14 information, in fairness to Mr. Wells, is that that person is
15 supervising this prosecution and will be present. That is a
16 new piece of information, in fairness to Mr. Wells.

17 THE COURT: If you want, I will instruct that juror,
18 although I'm sure that juror already understands, to have no
19 contact with anyone from the U.S. Attorney's Office during the
20 duration of this trial.

21 As I said, he said he could be fair and impartial. I
22 have every reason to believe he could be fair and impartial. I
23 did not see that there was a basis for excusing him for cause.
24 I still do not see a basis for excusing him for cause. But, in
25 addition, defendant had ten challenges, and he chose not to

1 challenge that, and I don't think the new information changes
2 the equation.

3 But what I will do is inquire or direct the juror --
4 we are still missing number 12. Would you ask juror number 11
5 to come to the sidebar, please, and, counsel, please come to
6 the sidebar.

7 MS. ROTHMAN: Your Honor, one other thing. We are
8 happy to have Mr. Sobelman not come to watch the court
9 proceeding.

10 THE COURT: Deprive him of this opportunity. My
11 understanding is, he is bringing a little pad to grade you.
12 But, OK. Is he here in the courtroom now?

13 MS. ROTHMAN: Yes.

14 THE COURT: There he is, looking very distinguished.
15 He has much more gray hair than any other AUSA I have ever
16 seen.

17 Would you mind vacating the premises. And don't come
18 back.

19 (At the sidebar; juror present)

20 THE COURT: You had mentioned that you had been
21 friends with various people at the U.S. Attorney's Office. I'm
22 sure this is obvious to you, given your present position as a
23 lawyer in the appeals division of the state. You should not
24 have contact with any AUSA in any way, shape, or form during
25 the course of this trial.

1 Do you understand that?

2 JUROR: Yes.

3 THE COURT: Very good.

4 MR. MCGORTY: While we are at sidebar, can we put in a
5 request for the transcript under CJA funds. Making a request
6 for the daily transcript.

7 THE COURT: That's fine.

8 MR. MCGORTY: Thank you.

9 (In open court)

10 THE COURT: We are still missing juror number 12,
11 which is odd. It's one thing for jurors to be late coming into
12 court, because of the transportation issues or whatever.

13 Still missing, Linda?

14 My inclination, but let me hear from counsel, is to
15 excuse that juror and replace that juror with alternate number
16 1. It is now almost 25 minutes that she was due back. I am
17 sure it's some innocent reason or whatever. We have already
18 had delays. We need to keep this trial moving, in fairness to
19 all the other jurors.

20 THE DEPUTY CLERK: She is here.

21 THE COURT: The issue becomes moot, but I will say
22 something at the end of the day to the jurors about promptness
23 in the future.

24 THE DEPUTY CLERK: May I bring in the jury?

25 THE COURT: Please. All of them.

(Jury present)

THE COURT: Ladies and gentlemen, we are now going to hear opening statements from counsel for each side. I want to emphasize that nothing that counsel says is evidence. The evidence will come from the witnesses, from the exhibits, and there may be stipulations. Those are the only three sources of evidence.

Why do we even have opening statements? The answer is, the evidence will come in one little bit at a time, and, therefore, it may be helpful to you to have an overview of what each side thinks the evidence will show or fail to show as the case may be. They are obviously going to have different views, but it may be helpful to hear what their views are to help you focus on the issues in the case.

As you will recall, the government bears the burden to prove the defendant guilty beyond a reasonable doubt, and I will give you instructions later on as to what is meant by beyond a reasonable doubt. But because they bear the burden of proof they go first, so we will hear now from the government.

MR. COYLE: This is a case about a man who stole people's identities and used those identities to steal money from banks. The defendant, Laurell Wells, ran a scheme to cash fake checks in the names of real people and real businesses. He targeted dozens of banks and stole hundreds of thousands of dollars.

1 And he didn't act alone. He recruited others,
2 typically, women he was dating, to help him do it. That's why
3 we are here today, because it's a federal crime to steal
4 people's identities and use those identities to steal money
5 from banks.

6 This is the government's opening statement. It's an
7 opportunity to explain what we expect the evidence will show
8 and how we will prove to you that the defendant is guilty.

9 What will the evidence show? You will learn that the
10 defendant's scheme was simple. First, he got personal
11 information, like dates of birth, Social Security numbers, and
12 bank account numbers. Second, he used that information to make
13 fake checks, fake money orders, and fake IDs. And, third, he
14 used other people to cash those fake checks and money orders at
15 banks, then walk out with thousands of dollars in cash, money
16 that he had no right to.

17 How did the defendant get this personal information?
18 Insiders.

19 One insider was his girlfriend who worked at the
20 Department of Motor Vehicles. She stole information from DMV
21 files, like dates of birth and signatures off a New York
22 driver's license, and she sent it to the defendant.

23 Other insiders worked at the banks. They were trusted
24 to keep people's identities safe, but instead sent the
25 defendant information on bank customers, like account numbers

1 and pictures of checks. The defendant then sent this
2 information to the other people who used it to make the fake
3 IDs, checks, and money orders.

4 The defendant then brought people to the banks. He
5 gave the fake -- those people gave the fake IDs and the checks
6 to bank tellers, and they walked out with the cash, cash that
7 they handed right to the defendant, money that did not belong
8 to them and that did not belong to the defendant.

9 You'll learn that the defendant carried out a scheme
10 here in New York and at bank branches all across the country:
11 Iowa, Missouri, Alabama, Florida. He ran the same playbook
12 over and over dozens of times.

13 You will learn about a time when the defendant used a
14 fake ID and fake check himself to commit fraud at a bank just
15 north of New York City. At one bank he cashed a fake check
16 using a stolen identity and walked out with almost \$4,000 in
17 his pocket. He then tried to do the same thing at another bank
18 right around the corner, but the bank caught on to him and they
19 froze the account.

20 A few months later the defendant was arrested for
21 doing this. And when he was caught he was carrying a fake ID
22 in the name of the bank customer he had impersonated to cash
23 that fake check. That is what the evidence will show, that the
24 defendant recruited insiders to send him confidential
25 information that used fake ID checks and money orders to commit

1 fraud, that he used women to go in the banks to steal the
2 money, and even went in the banks to do it himself.

3 How will the government prove that the defendant is
4 guilty?

5 First, you'll see bank surveillance video and
6 photographs. You will see video of the defendant in banks
7 trying to cash fake checks. You will see photographs of the
8 women he recruited in dozens of banks handing fake checks and
9 money orders to tellers and walking out with thousands of
10 dollars in cash, cash they gave to the defendant.

11 Second, you'll see documents. You'll see copies of
12 the fake checks and IDs used to steal money from the banks.
13 You'll see records, like a speeding ticket the defendant got
14 close to one of the banks and a hotel reservation he made in
15 the same area, evidence that even though the defendant didn't
16 often go into the banks himself, he was always nearby.

17 Third, you'll see the defendant's own words in dozens
18 of text messages, messages with a bank teller who sent him
19 check images and customer account information, messages where
20 the defendant sent that same information to his partner to make
21 the fake IDs and fake checks, messages with his girlfriend,
22 where she gave him dates of birth, images of signatures, and
23 other information from DMV files that he needed to make the
24 fake documents.

25 Finally, you will hear from witnesses. You will hear

1 from a victim whose identity was stolen by the defendant. She
2 will tell you about the morning she walked into work and
3 learned that someone had used her company's name to print fake
4 checks and steal thousands of dollars from her account.

5 You will hear from law enforcement officers, including
6 an investigator at the DMV. He will tell you that he
7 discovered that the defendant's girlfriend searched for account
8 information in DMV's systems, information that she later texted
9 to the defendant, and you will hear from the women the
10 defendant used to commit these crimes. They will come into
11 court and tell you that the defendant recruited them, that they
12 sent the defendant customer information or cashed fake checks
13 because the defendant asked them to and because he gave them
14 some of the money.

15 You will learn these women have entered into a
16 grievance with the government where they cannot be prosecuted
17 for their involvement in the scheme so long as they tell the
18 truth.

19 As you listen to their testimony, ask yourself if what
20 they say is backed up by all the other evidence at the trial,
21 evidence like the defendant's text messages, the surveillance
22 images from the bank, the DMV records and more.

23 After seeing all the evidence, you will know that the
24 defendant worked with others to steal from banks, and you will
25 know that he used people's stolen identities to do it.

1 At the end of the trial, we are going to have the
2 chance to speak to you again. But between now and then I would
3 like you to do three things: First, pay close attention to the
4 evidence; second, follow Judge Rakoff's instructions on the
5 law; and, third, use your common sense, the same common sense
6 you use every day. If you do those three things, you will
7 reach the only verdict that is consistent with the evidence,
8 the law, and common sense, that the defendant, Laurell Wells,
9 is guilty. Thank you.

10 THE COURT: Thank you very much.

11 Now we will hear from defense counsel.

12 MR. CURRIE: Thank you, your Honor.

13 Good afternoon, ladies and gentlemen. Just before
14 lunch, before the judge excused you, you all stood, raised your
15 hand and took an oath to follow your duties and
16 responsibilities as jurors in this case, and of course you are
17 going to follow the judge's instructions, as you swore to do
18 so, and the judge explained that Mr. Wells, like every
19 defendant charged in the United States, is entitled to certain
20 fundamental protections.

21 One of them is the presumption of innocence. That's a
22 safeguard, the presumption of innocence, that protects all of
23 us in the United States. Everyone charged with a crime is
24 entitled to that presumption from the moment the trial begins
25 until the moment the jury reaches its conclusion in

1 deliberations. You should imagine that that presumption stays
2 with Mr. Wells at the beginning of every session, at the end of
3 every session, and when we come back tomorrow morning and every
4 day of this trial, that presumption remains with them.

5 Now, another important principle that the judge
6 mentioned is the government's burden of proof. The judge
7 explained that the government has a burden of proving beyond a
8 reasonable doubt every element of the crime charged. Now, our
9 law intentionally makes that a heavy burden for the government.
10 The burden never shifts from the government to the defense. As
11 you consider all of the evidence in this case, keep that in
12 mind, that the government maintains burden of proof. The
13 defense has no burden to prove anything, no burden to put on
14 any evidence. You will hear us question and challenge
15 evidence, but we have no burden of presenting evidence.

16 Let's talk about the evidence that you are going to
17 hear. Now, some of the evidence you are going to hear, there
18 is going to be no dispute about that. There is not going to be
19 a dispute that people went into banks and tried or successfully
20 cashed fraudulent checks, and you will hear from some of the
21 people who did that or some of the people who were inside a
22 bank providing information.

23 What the government won't be able to prove, what they
24 won't be able to convince you beyond a reasonable doubt is that
25 Mr. Wells had anything to do with those transactions.

1 The most important part of the government's case
2 relies on the testimony of people who committed crimes, who
3 committed check fraud themselves, and who are going to appear
4 before you and testify. They will testify about their own
5 wrongdoing.

6 As you consider that, as you consider that evidence of
7 these witnesses, you should appropriately be skeptical. These
8 are people with their own motivations. They have a motivation
9 to, I submit, maintain the favor of the government, because the
10 government has agreed that they don't get charged. They get
11 off. Nothing happens to them by the prosecution. That, I
12 submit, is a motive you must consider very carefully as you
13 evaluate their evidence.

14 Now, one thing that we agree with, Mr. Coyle asked
15 everyone to apply their common sense. We agree. It's really
16 important. And as you evaluate the evidence in this case,
17 apply your common sense, especially to these witnesses who are
18 involved in check fraud themselves. Apply your common sense to
19 evaluate what is their motivation to testify in this case, what
20 is their motivation to testify in the way that they do testify,
21 and does that square with your common sense.

22 At the end of the case, we will have an opportunity to
23 speak to you again, and we submit that what you will determine
24 after you get together and consider all of the evidence and
25 discuss it among yourselves is that the government will have

failed to meet its burden, that heavy burden of determining -- of proving to you, satisfying to you that they proved every element of every crime charged in this case beyond a reasonable doubt.

Thank you for your attention.

THE COURT: Thank you very much.

The government will call their first witness.

MS. CHENG: The government calls Esther Sandrof to the stand.

ESTHER SANDROF,

called as a witness by the government,

having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. CHENG:

Q. Ms. Sand, where do you work?

A. I work at Forsyth Street Advisors.

Q. Where is the company located?

A. It's located at 588 Broadway in New York.

Q. What borough is that?

A. In Manhattan.

Q. What does the company do?

A. We help to finance affordable housing.

Q. Approximately how many people work at Forsyth?

A. About 18 employees.

Q. What's your role at Forsyth Street Advisors?

1 A. My title is chief operating officer, so I manage the
2 administrative functions of the office. I'm also a consultant
3 in the company.

4 Q. How long have you worked at the company?

5 A. I'm a cofounder. We founded the company in 2003.

6 Q. What are your responsibilities as the chief operations
7 officer?

8 A. I manage the administrative functions in the company, which
9 includes accounts payable, accounts receivable, and payroll
10 benefits and the pension fund.

11 Q. Would your financial responsibilities for the firm involve
12 issuing or handling checks issued by the firm?

13 A. Yes.

14 Q. Based on your role at Forsyth, are you familiar with the
15 vendors or other service providers that the firm uses?

16 A. I am.

17 Q. Are you familiar with the clients that the firm has?

18 A. I am.

19 Q. I'd like to direct your attention to January of 2018. Were
20 you involved in the firm's bookkeeping at that time?

21 A. I was.

22 Q. In January of 2018, did you receive a bank notification
23 concerning Forsyth's bank account at that time?

24 A. Yes.

25 Q. Where were you when you received that notification?

1 A. I was in the office.

2 Q. Where was the office located?

3 A. 588 Broadway in New York.

4 Q. Was that the office in Manhattan you just spoke about a few
5 moments ago?

6 A. Yes, same office.

7 Q. What bank did you receive the notification from?

8 A. Chase Manhattan Bank.

9 Q. Did Forsyth have a bank account with Chase Manhattan at the
10 time?

11 A. Yes.

12 Q. What kind of account was it?

13 A. It was a checking account.

14 Q. Where did Forsyth first open that account with Chase?

15 A. We opened the account in midtown when we formed the firm in
16 2003, so we had the account since then.

17 Q. Just to clarify, when you refer to midtown, what do you
18 mean?

19 A. When we opened the firm, our offices were located for about
20 a year in the east 40s. So we opened the account at a branch
21 in the east 40s. But after that, we moved down to Soho in
22 2004.

23 Q. Are all these locations that you have just mentioned in
24 Manhattan?

25 A. Yes.

1 Q. After you received the notification from Chase, what's the
2 first thing you did?

3 A. I got together with our administrative staff members, and
4 we contacted our bookkeeper to figure out -- to look at the
5 account and confirm what the bank had said -- the bank had said
6 that they thought that there was some fraud in our account, and
7 we needed to check and confirm with them. So we checked and we
8 confirmed that the checks that had been written were not
9 written by anybody in our office.

10 Q. Did you identify any unauthorized payments that were drawn
11 from Forsyth's Chase checking account?

12 A. There were checks written. The money was never taken from
13 the account because the bank identified the fraud before the
14 money could be withdrawn from the account.

15 Q. How many check transactions were unauthorized?

16 A. There were four checks.

17 Q. Do you know what Forsyth checks looked like in November and
18 December of 2017?

19 A. Yes, I do.

20 Q. How do you know what those checks looked like?

21 A. The checks that we issued?

22 Q. How did you gain familiarity with what Forsyth checks
23 looked like during the time period of November and December of
24 2017?

25 A. I was a signator on the account.

1 MS. CHENG: With Mr. Santello's assistance, I'd like
2 to pull up just for the witness what has been marked for
3 identification as Government Exhibit 301A. It's just for the
4 witness, please.

5 Your Honor, with your permission, at this time I would
6 like to read a stipulation into the record.

7 THE COURT: OK.

8 MS. CHENG: This is from Government Exhibit 1005.

9 "It is hereby stipulated and agreed, by and among the
10 United States of America, by and through the undersigned
11 Assistant United States Attorneys and Laurell Wells, the
12 defendant, by and through his undersigned counsel that:

13 1. Government Exhibits 301 through 306 and 308,
14 including their subparts, are true and correct copies of
15 records produced by JP Morgan Chase Bank NA.

16 2. Government Exhibits 401 through 430, including
17 their subparts, are true and correct copies of records produced
18 by Regions Bank.

19 3. Government Exhibit 609 is a true and correct copy
20 of surveillance footage from an M&T Bank branch in Rye Brook,
21 New York recorded on March 27, 2019. Subpart A: Government
22 Exhibits 609A through 609H are screenshots from Government
23 Exhibit 609.

24 4. Government Exhibit 608 is a true and correct copy
25 of surveillance footage from an M&T Bank branch in Cos Cob,

Connecticut, recorded on March 29, 2019. Subpart A.:
Government Exhibits 608A through 608D are screenshots from
Government Exhibit 608.

5. Government Exhibits 601 through 607 are true and
correct copies of records produced by M&T Bank.

6. The original records for the information contained
in Government Exhibits 301 through 306 and 308, including their
subparts in, 401 through 430, including their subparts, and 601
through 609, including their subparts, are records of regularly
conducted activity that were made at or near the time of the
occurrence of the matters set forth in the record by or from
information transmitted by a person with knowledge of the
matter set forth in the records, were kept in the course of the
regularly conducted business activity, and it was a regular
practice of that activity to make the records.

It is further stipulated and agreed that this
stipulation, marked as Government Exhibit 1005, may be received
in evidence as a government exhibit at trial.

At this point the government offers all of the
referenced exhibits from this stipulation, as well as the
stipulation itself, into evidence.

THE COURT: Received.

(Government Exhibits 1005, 301-306, 308, including
their subparts, 401-430, including their subparts, 609,
609A-609H, 608, 608A-608D, 601-607 received in evidence)

1 MS. CHENG: Your Honor, may I publish Government
2 Exhibit 301A to the jury?

3 THE COURT: Yes.

4 MS. CHENG: Mr. Santello, can you publish 301A to the
5 jury. Can you not highlight this particular part yet. I would
6 like to show the witness the full document.

7 Can you scroll through.

8 Can we turn back to the next page, please.

9 Q. Ms. Sandrof, what is this document?

10 A. It's a copy of the check -- of one of the checks.

11 MS. CHENG: At this time, Mr. Santello, can you blow
12 up the image of the check on this first page.

13 Q. Directing your attention to the first check of this
14 exhibit, who is listed as the issuer of the four checks?

15 A. It says Forsyth Street Advisors LLC.

16 Q. Is that the name of your company?

17 A. It is the name of our company, yes.

18 Q. Who are these checks paid out to?

19 A. Sandra Mendieta.

20 Q. Do you know who Sandra Mendieta is?

21 A. No.

22 Q. Does she work at Forsyth?

23 A. No.

24 Q. Is she a client of Forsyth?

25 A. No.

1 Q. Is she associated with any vendors did that provides
2 services to Forsyth?

3 A. Not that I know of.

4 Q. Below her name in is an address. Is that address
5 associated with Forsyth?

6 A. No.

7 Q. Is that address associated with any clients of Forsyth?

8 A. No.

9 MS. CHENG: Mr. Santello, can we return back to the
10 full-size image of the first page.

11 Q. Taking a look at the first page of this document, what date
12 was this check cashed?

13 A. It was issued on 12/15/2017.

14 THE COURT: I'm sorry. You need to get closer to the
15 microphone.

16 A. I'm sorry. My eyesight is not very good. The date on the
17 check is 12/15/2017.

18 Q. Can you see when this check was cashed.

19 A. I am not sure how to read checks in that way. The posting
20 date says 12/29/2017. Is that what you mean?

21 Q. Yes. Thank you.

22 MS. CHENG: Can we return back to the full-size image
23 of the first page.

24 Can we turn to the second page.

25 Can we blow up the image of the check.

1 Q. Who is this check made out to?

2 A. Sandra Mendieta.

3 Q. Is that the payee of the prior check as well?

4 A. Yes.

5 Q. Who is the issuer of this check?

6 A. Forsyth Street Advisors LLC it says.

7 MS. CHENG: Can we return back to the full-size image
8 of this page.

9 Q. You see what date this check was cashed.

10 A. December 29, 2017.

11 MS. CHENG: Can we move to the third page. Can you
12 blow up the image of the check, please.

13 Q. Who is the payee listed for this check?

14 A. Sandra Mendieta.

15 Q. Who is the payor listed for this check?

16 A. Forsyth Street Advisors LLC.

17 MS. CHENG: Can we return back to the full-size image
18 of this page.

19 Q. What was the date that this check was cashed?

20 A. December 29, 2017.

21 MS. CHENG: Let's turn to the last page, page 4.

22 Can you blow up the image of the check.

23 Q. Who is this check made out to?

24 A. Sandra Mendieta.

25 Q. Who is the payor on this check?

1 A. Forsyth Street Advisors LLC.

2 MS. CHENG: Can we return to the full-size image of
3 the page.

4 Q. What was the date that this check was cashed?

5 A. December 29, 2017.

6 Q. Were all four of these checks cashed on the same date?

7 A. It appears so, yes.

8 Q. Were they all listing Forsyth Street Advisors as the payor?

9 A. Yes.

10 Q. They all listed Sandra Mendieta as the payee?

11 A. Yes.

12 MS. CHENG: Let's turn back to the first page, please.

13 Q. When you reviewed these four checks, did they appear to you
14 to be genuine checks of the firm?

15 A. No.

16 Q. I'd like to direct your attention to specific features of
17 the check. We will use the first one as an example. Do you
18 see the logo that's in the center top of the top image of the
19 check?

20 A. Yes.

21 (Continued on next page)

1 BY MS. CHENG:

2 Q. Did the four checks include this logo?

3 A. No.

4 Q. I'd like to direct your attention to the upper right corner
5 of the check. Do you see that check number?

6 A. Yes.

7 Q. Was this check number correct?

8 A. No. We were about 5300 at that time.

9 Q. Can you explain what you mean by that?

10 A. The checks have numbers on them in sequence and this check
11 has a number that's completely out of sequence with the checks
12 that we were issuing at that time.

13 Q. Did all four of the checks we just looked at have these
14 features that you identified the check being out of sequence
15 and this logo that doesn't appear on genuine Forsyth checks?

16 A. Yes.

17 MS. CHENG: I'd like to direct your attention to about
18 the middle of the page where you see the account number on the
19 check.

20 So, I think if you would highlight just the right most
21 collection of documents that we've highlighted, Mr. Santello.

22 (Pause).

23 Q. Do you see that?

24 A. Yes.

25 Q. Is that the correct account number Forsyth Advisers?

1 A. Yes.

2 MS. CHENG: Can we return back to the full size image
3 of page one.

4 (Pause)

5 Q. Did your firm authorize any of these four checks?

6 A. No.

7 Q. Did your firm authorize the use of Forsyth's name and
8 account number on any of these four checks?

9 A. No.

10 Q. After you learned that there were these four unauthorized
11 checks, did Forsyth continue to use this particular Chase Bank
12 account?

13 A. The bank advised us that we need to shut down the account
14 and open a new checking account.

15 Q. Now I believe you testified earlier that Forsyth did not
16 lose money as a result of the processing of these four fake
17 checks; is that right?

18 A. That's correct.

19 Q. Why not?

20 A. The bank caught the fraud before the money had been drawn
21 from our account. So, there were no deductions from our
22 account based on these checks.

23 Q. Setting aside the dollar amount of the checks, did the firm
24 incur any other costs due to the fact that this checking
25 account information had been used in an unauthorized manner on

1 those four checks we just saw?

2 A. There were costs related to disruption of having to create
3 a new checking account because our payroll and all of our --
4 had to be switched over and we had to instruct our clients that
5 we had a new account number because we often get paid
6 electronically and so they had to contact all of our clients
7 and vendors. So it involved a lot of work from our
8 administrative staff and our bookkeeper to make everything
9 right again, particularly, before the next payroll which was on
10 the 15th of January, 2018.

11 Q. Approximately, how long did it take Forsyth to fully
12 transition from this prior Chase Bank account to a new account?

13 A. Took approximately three months, I would say.

14 Q. Also, you mentioned that the firm, your firm did not lose
15 the dollar value that we saw on these four checks but do you
16 know whether or not Chase Bank lost the money from those four
17 checks?

18 MS. GIFFUNI: Objection, your Honor.

19 THE COURT: Given the answer, it is probably mute but
20 I'll sustain the objection.

21 MS. CHENG: If I could have a moment please, your
22 Honor?

23 THE COURT: Yes.

24 (Pause)

25 MS. CHENG: Thank you. No further questions.

1 THE COURT: Cross-examination?

2 CROSS-EXAMINATION

3 BY MS. GIFFUNI:

4 Q. Good afternoon, Ms. Sandrof.

5 You met with the government on more than one occasion
6 to prepare for your testimony here today?

7 A. Yes.

8 Q. You met with them on two occasions and you had a call with
9 them on a third occasion; is that correct?

10 A. Yes.

11 Q. Okay. And before the government showed you the checks or
12 those four checks in the meetings, you had never seen those
13 checks before the four checks you testified about?

14 A. The bank had sent us copies of the checks at the time so we
15 could confirm that they were not our checks.

16 Q. You had told the government in a meeting that you don't
17 recall ever seeing those checks or even knowing that it was a
18 check based fraud, correct?

19 MS. CHENG: Objection.

20 THE COURT: Sustained as to form. There are ways to
21 ask that.

22 MS. GIFFUNI: Thank you, your Honor.

23 Q. You don't know who tried to cash those checks at Chase
24 Bank, do you?

25 A. No.

1 Q. You have no idea how the fraud was actually perpetrated
2 against your account, correct?

3 A. No.

4 Q. And independent of what the government may have told you,
5 you have no idea who perpetrated the account against Forsyth's
6 account, correct?

7 MS. CHENG: Objection to form.

8 THE COURT: Well, I think the objection is valid only
9 because of the preface, but to the extent it is not already
10 been asked and answered, you can ask the latter part of that
11 question.

12 MS. GIFFUNI: Thank you, your Honor.

13 Q. You have no idea who perpetrated the fraud against
14 Forsyth's account, correct?

15 A. Correct.

16 Q. And you mentioned on direct that you were reimbursed and
17 you never saw a monetary loss to your bank account?

18 A. To our bank, yes.

19 MS. GIFFUNI: No further questions.

20 THE COURT: Any redirect?

21 MS. CHENG: No, your Honor.

22 THE COURT: Call your next witness.

23 MR. COYLE: Your Honor, the government calls Summer
24 Robins.

25 Your Honor, may we set up a face board in the well of

1 the courtroom?

2 THE COURT: Yes.

3 (Pause)

4 THE COURT: Go ahead.

5 MR. COYLE: Your Honor, does the witness need to be
6 sworn-in?

7 Please rise and raise your right hand.

8 SUMMER ROBBINS,

9 called as a witness by the Government,
10 having been duly sworn, testified as follows:

11 THE COURT: Please state your name and spell it for
12 the record.

13 THE WITNESS: Summer Robbins, S-u-m-m-e-r,
14 R-o-b-b-i-n-s.

15 THE COURT: Counsel.

16 MR. COYLE: Thank you.

17 DIRECT EXAMINATION

18 BY MR. COYLE:

19 Q. Good afternoon, Ms. Robins.

20 How old are you?

21 A. Thirty-five.

22 Q. And are you currently employed?

23 A. I am.

24 Q. Where do you work?

25 A. I work in radiology.

1 Q. What do you do there?

2 A. Administrative support.

3 Q. Directing your attention to December of 2017, did there
4 come a time when you participated in a bank fraud scheme?

5 A. Yes.

6 Q. At which bank did you commit fraud?

7 A. Chase.

8 Q. What did you do as part of your involvement in the scheme?

9 A. I endorsed and cashed checks that weren't made out to me.

10 Q. Did you know those checks to be fake?

11 A. Yes.

12 Q. When you cashed the fake checks at Chase, were you acting
13 alone or with other people?

14 A. With others.

15 Q. Who were you working with?

16 A. Laurell Wells.

17 Q. Do you see Laurell Wells in the courtroom today?

18 A. Yes, I do.

19 Q. Can you please identify him by an article of clothing he is
20 wearing and where he is seated?

21 A. A yellow top and right here.

22 MR. COYLE: Let the record reflect at witness has
23 identified the defendant, Mr. Laurell Wells.

24 THE COURT: Yes.

25 MR. COYLE: Mr. Santello, can you please pull up

1 what's been marked for identification as Government Exhibit
2 one.

3 (Pause)

4 Q. Ms. Robbins, do you recognize this photo?

5 A. Yes, I do.

6 Q. Who is this a photo of?

7 A. Laurell.

8 Q. Is this a fair and accurate photo of the defendant?

9 A. Yes, it is.

10 MR. COYLE: The government offers Government Exhibit
11 one into evidence.

12 MR. MCGORTY: No objection.

13 THE COURT: Received.

14 MR. COYLE: May we publish to the jury?

15 THE COURT: Yes.

16 (Pause)

17 MR. COYLE: Thank you. You can take that down.

18 Mr. Santello, please pull up Government Exhibit Three.

19 (Pause)

20 MR. COYLE: What has been marked for identification as
21 Government Exhibit Three. My apologies.

22 Q. Do you recognize this photo, Ms. Robbins?

23 A. Yes, I do.

24 Q. Who is this a photo of?

25 A. Me.

MR. COYLE: The government offers Government Exhibit three into evidence.

MR. MCGORTY: No objection.

THE COURT: Received.

(Government's Exhibit Three received in evidence)

MR. COYLE: May we publish to the jury?

THE COURT: Yes.

(Pause)

MR. COYLE: Thank you. You can take that down.

Q. Ms. Robbins, when you first met the defendant, what did he say his name was?

A. Corey.

MR. COYLE: Your Honor, may we publish Government Exhibit One and Government Exhibit Three to the face board and add the nameplate "Corey" and "Laurell Wells" under the defendant's photograph?

THE COURT: Yes.

(Pause)

Q. Let's start at the beginning, Ms. Robbins.

How did you meet the defendant?

A. I met him driving on the Bruckner Expressway in the Bronx.

Q. How did you meet as you were driving?

A. Well, first I noticed his car and then we ended up at a stoplight together where he had waived me down and we exchanged names and numbers.

1 Q. And at that time, what did he say his name was?

2 A. "Corey".

3 Q. And you said you exchanged phone numbers?

4 A. Yes, we did.

5 Q. And you said he was driving a particular vehicle,
6 obviously, on the Bruckner?

7 A. Yes.

8 MR. COYLE: Mr. Santello, can you please pull up for
9 the witness what's been marked for identification as Government
10 Exhibits 201 and Government Exhibit 202.

11 (Pause)

12 Q. Ms. Robbins, do you recognize the vehicle in these photos?

13 A. I do.

14 Q. Whose vehicle is it?

15 A. Laurell.

16 Q. Is that the vehicle he was driving when you met him on the
17 Bruckner?

18 A. Yes, it was.

19 MR. COYLE: The government offers Government Exhibits
20 201 and 202 into evidence.

21 MR. MCGORTY: No objection, your Honor.

22 THE COURT: Received.

23 (Government's Exhibits 201 and 202 received in
24 evidence)

25 MR. COYLE: May we publish to the jury?

1 THE COURT: Yes.

2 (Pause)

3 Q. Can you describe what the vehicle looked like that the
4 defendant was driving that day you met him?

5 A. It was a foiled Audi with mirrors. You could see your
6 reflection in it.

7 Q. Is that why you took notice of the car when he was driving?

8 A. Yes.

9 Q. And you said you exchanged phone numbers with the defendant
10 that day, correct?

11 A. Yes.

12 Q. So after you met him when driving, when did you next speak
13 with the defendant?

14 A. Later on that day.

15 Q. What did you talk about?

16 A. Just I guess normal things when you are meeting someone for
17 the first time, like dating, conversations, like what do you
18 like and what do you do for fun?

19 Q. And did there come a time when you met the defendant in
20 person?

21 A. Yes.

22 Q. Approximately, how long after you first met him on the
23 Bruckner Expressway was that?

24 A. A few days.

25 Q. Do you remember where you met him?

1 A. In the Bronx.

2 Q. And after you met him that first time did you see each
3 other often?

4 A. We saw each other maybe like a couple days a week.

5 Q. What types things would you and the defendant do together?

6 A. We would have dinner together. We took a trip to Atlantic
7 City to Connecticut.

8 Q. How would you describe the nature of your relationship with
9 the defendant at that time?

10 A. I thought I was getting to know him romantically.

11 Q. You mentioned that you took a few trips with the defendant,
12 correct?

13 A. Yes.

14 Q. I think I heard you say "Atlantic City" and "Connecticut";
15 is that right?

16 A. Yes.

17 Q. Why don't we start with Atlantic City. Do you remember how
18 often after you met the defendant or -- I'm sorry. How long
19 after you met the defendant you took that trip?

20 A. I would say like maybe a week or two.

21 Q. Do you remember what you did there?

22 A. We went to a casino.

23 Q. What was the name of the casino?

24 A. The Golden Nugget.

25 Q. What did you do at the casino?

1 A. We checked in. They had a hotel. We checked into the
2 room. We went down to the casino for, where Laurell gambled.

3 Q. Did you book the hotel room or did the defendant?

4 A. I did not.

5 Q. When you traveled down to Atlantic City do you remember how
6 you got there?

7 A. Yes.

8 Q. How is that?

9 A. He drove.

10 Q. What car did he drive?

11 A. His.

12 Q. His car. Is that the Audi you mentioned before?

13 A. Yes.

14 Q. Then you mentioned another trip to Connecticut. What did
15 you do on that trip?

16 A. We went to a wine spot and had dinner.

17 Q. Did you stay overnight?

18 A. No, we did not.

19 Q. You testified that you participated in bank fraud with the
20 defendant, correct?

21 A. Yes.

22 Q. How did that come about?

23 A. Laurell had approached me about it and pretty much told me
24 that I wouldn't get in trouble, like I would get away with it.
25 It was going to be very easy.

1 Q. What did he ask you to do?

2 A. He asked me to go into Chase and to endorse checks and to
3 cash them.

4 Q. This first time when the defendant asked you to do that,
5 how did you respond?

6 A. I was like, absolutely not.

7 Q. Why didn't you agree right away?

8 A. Because I knew it was a crime.

9 Q. Did he ask you again?

10 A. Yes, he did.

11 Q. You said you did eventually participate, right?

12 A. Yes, I did.

13 Q. How many times did he ask you before you agreed?

14 A. About two or three times.

15 Q. So, on the day you agreed to actually help the defendant
16 commit fraud, how did that happen?

17 A. Well, Laurell was very persuasive in asking me to help him.
18 He told me that all I had to do was go into the bank and cash
19 the checks and it would be easy and I would make money from it.

20 THE COURT: When you say "cash the checks", these were
21 checks made out to someone else than you?

22 THE WITNESS: Yes.

23 THE COURT: All right. Go ahead.

24 Q. Did you know that what you were going to do was going to be
25 illegal?

1 A. Yes, I did.

2 Q. Ms. Robbins, why did you agree to participate?

3 MR. MCGORTY: Object to the relevance, your Honor.

4 THE COURT: No. I think it goes to credibility.

5 Overruled.

6 A. I agreed to cash the checks. He was persuasive but at the
7 same time I was kind of starting life over just starting from
8 scratch. I didn't want to ask my parents for money so I
9 agreed.

10 Q. Did you understand you would receive any money?

11 A. Yes, I did.

12 Q. Why did you understand that?

13 A. Because he told me that I would.

14 Q. How much did he say you'd make?

15 A. Five hundred dollars.

16 Q. I want to talk about that time you cashed the checks in
17 detail. Where was the bank located?

18 A. It was located in Brooklyn on Flatbush Avenue by Grand Army
19 Plaza.

20 MR. COYLE: Mr. Santello, can you please pull up for
21 the witness what has been marked for identification as
22 Government Exhibit 203, please.

23 (Pause)

24 Q. Do you recognize what's shown in this photo?

25 A. I do.

1 Q. What's this a photograph of?

2 A. The bank that I cashed the checks in.

3 MR. COYLE: The government offers Government Exhibit
4 203 into evidence.

5 THE COURT: Any objection?

6 MR. MCGORTY: No objection, your Honor.

7 THE COURT: Received.

8 (Government's Exhibit 203 received in evidence)

9 MR. COYLE: May we publish to the jury, please?

10 THE COURT: Yes.

11 (Pause)

12 Q. How did you get to the bank that day?

13 A. Laurell drove me.

14 Q. What, if anything, did the defendant give you before you
15 went in?

16 A. He gave me checks, an ID and a bank card.

17 Q. Did he give you any instructions for when you went in the
18 bank?

19 A. Yes, he did.

20 Q. What did he tell you to do?

21 A. He told me that I needed to go to a specific teller. It
22 was a young black woman, to only go to her and she would cash
23 the checks.

24 Q. Did he tell you why he wanted you to go to that teller?

25 A. Because she was working with him.

1 Q. What do you mean "working with him"?

2 A. That they had some type of arrangement.

3 Q. Just to be clear, those checks and the ID he gave you to
4 cash or -- sorry -- the checks he gave you to cash and the ID
5 he gave you to use, were those in your name?

6 A. No, they were not.

7 Q. You understand them to be fake?

8 A. Yes, I did.

9 Q. I think you did this a little bit but did he describe the
10 teller he wanted you to go to?

11 A. Yes, he did.

12 Q. How did he describe her to you?

13 A. That she was a young black girl.

14 Q. Did he tell you anything else about her?

15 A. Yes, he did.

16 Q. What was that?

17 A. He told me that she was about 20/21. It was her first job
18 working at the bank and she had a young baby at home and she
19 was working with him, that he would give her things like beats
20 or headphones and stuff like that.

21 Q. Did you say you were supposed to receive money from the
22 defendant after you cashed these checks?

23 A. Yes.

24 Q. How much?

25 A. Five hundred dollars.

1 Q. The day you went into the bank, do you remember what you
2 were wearing?

3 A. Yes, I do.

4 Q. What was that?

5 A. I was wearing a hot pink hat, a pink fur coat.

6 Q. Can you tell us what happened when you went into the bank
7 that day?

8 A. I went in. I saw the teller that he described. I waited
9 until there was an opportunity where I knew that I would get
10 her as my teller. And I gave her the checks with the ID and
11 the bank card and I signed -- Well, after I signed the checks I
12 gave them to her and she cashed them and gave me the money.

13 MR. COYLE: Mr. Santello, please put on the screen
14 what's already been put into evidence Government Exhibit 301.

15 (Pause)

16 MR. COYLE: May we publish to the jury please?

17 THE COURT: Yes.

18 MR. COYLE: Please turn to pages 11 through 15.

19 (Pause)

20 MR. COYLE: Go to 12, 13, 14, 15.

21 (Pause)

22 Q. Ms. Robbins, do you recognize who's in these photographs?

23 A. I do.

24 Q. Who is that?

25 A. It's me.

1 Q. What are you doing in those photos?

2 A. I am endorsing and cashing the checks.

3 Q. What date were these photographs taken?

4 A. These 29, 2017.

5 MR. COYLE: Mr. Santello, please turn to pages seven
6 through 10.

7 (Pause)

8 MR. COYLE: Go to eight. Go to nine and 10.

9 (Pause)

10 Q. Ms. Robbins, do you recognize these images?

11 A. I do.

12 Q. What are these images of?

13 A. The checks that I endorsed and cashed.

14 Q. If you look at the top left image of the check, it says
15 it's made out from Forsyth Street Advisers LLC. Do you know
16 what Forsyth Street Advisers is?

17 A. I do not.

18 Q. And the checks are payable --

19 THE COURT: Some might say "Forsyth" based on the last
20 witness's pronunciation.

21 MR. COYLE: Excuse me, your Honor. You are absolutely
22 correct. Forsyth Street Advisers.

23 A. I do not.

24 Q. And the checks are payable to Sandra Mendieta. Do you know
25 who that is?

1 A. I do not.

2 Q. But are these the checks that you cashed?

3 A. Yes, they are.

4 Q. And did you receive money from the bank after you cashed
5 these fake checks?

6 A. I did.

7 Q. Who did you give that money to?

8 A. Laurell.

9 Q. When did you give him the money?

10 A. Once I left the bank.

11 Q. Like immediately after?

12 A. I got in the car and gave him the money.

13 Q. Did he give you any money?

14 A. He gave me the five hundred dollars that he said he would.

15 MR. COYLE: You can take down the exhibit.

16 Thank you, Mr. Santello.

17 (Pause)

18 Q. Ms. Robbins, you mentioned you and the defendant were
19 getting to know each other and perhaps a romantic relationship
20 leading up to this. What happened in your relationship with
21 the defendant after you cashed those fake checks on December
22 29?

23 A. It diminished.

24 Q. Why is that?

25 A. Laurell had wanted me to endorse and cash more fake checks.

1 Q. Did he want you to do anything else?

2 A. Yeah.

3 Q. What's that?

4 A. Travel with him endorsing fake checks and cashing them.

5 Q. What do you mean "traveling", like outside of New York?

6 A. Yes.

7 Q. Did you agree with him to do that?

8 A. No.

9 Q. Why not?

10 A. Because I knew it was a crime and I had already committed
11 one crime.

12 MR. COYLE: Mr. Santello, can you please pull up for
13 the witness what's been marked for identification as Government
14 Exhibit 704A.

15 (Pause)

16 Q. Ms. Robbins, do you recognize what's on the screen?

17 A. I do.

18 Q. What is it?

19 A. It's a conversation, but photos of Laurell's car and of
20 him.

21 Q. When you say it's a conversation, there appears to be a
22 phone in the image. Whose phone is that?

23 A. It's mine.

24 Q. Is this a conversation that you had on your phone?

25 A. Yes, it is.

1 Q. Who is the other party in this conversation?

2 A. My cousin.

3 MR. COYLE: The government offers Government Exhibit
4 704A into evidence.

5 MR. MCGORTY: Subject to connection, we have no
6 objection.

7 THE COURT: Received subject to connection.

8 MR. COYLE: May we publish to the jury?

9 THE COURT: Yes.

10 (Pause)

11 MR. MCGORTY: Your Honor, withdraw that. We have no
12 objection.

13 THE COURT: Okay. Received.

14 (Government's Exhibit 704A received in evidence)

15 MR. COYLE: Mr. Santello, if you could slowly scroll
16 from pages one, two and three.

17 (Pause)

18 Q. Do you recognize the vehicle in these photographs?

19 A. I do.

20 Q. Whose vehicle is that?

21 A. Laurell's.

22 Q. Who took those photographs?

23 A. I did.

24 Q. What did you use to take them?

25 A. My iPhone.

1 MR. COYLE: Mr. Santello, please put up side-by-side.

2 THE COURT: Actually, counsel, let me interrupt you.

3 I think I promised the jury we would give them a short
4 midafternoon break. So this would be a good time. I want to
5 keep this break to about ten minutes at most because we started
6 a little bit late after lunch, but why don't we take a
7 ten-minute break.

8 (Jury not present)

9 THE COURT: You can step down. We'll see you in ten
10 minutes.

11 (Witness not present).

12 THE COURT: See you all in ten minutes.

13 (Recess)

14 THE COURT: Please be seated.

15 MR. MCGORTY: Your Honor, before we bring the witness
16 back, our client has advised us in light of the testimony he
17 has heard, he wishes to change his plea to a plea of guilty to
18 the crime as charged as distinguished from -- so, I defer to
19 the Court on that.

20 THE COURT: Well, let me make sure I'm not wasting my
21 time.

22 Mr. Wells, are you prepared to plead to, for example,
23 the substance of what this witness just testified to?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Tell the jury that we are going to

1 have a 15-minute delay.

2 We'll place the defendant under oath. Please raise
3 your right hand.

4 Do you swear to tell the truth, the whole truth and
5 nothing but the truth, so help you God?

6 THE DEFENDANT: Yes, sir.

7 (Defendant Laurell Wells sworn)

8 THE COURT: All right. So let me advise you that
9 anything you say now that you are under oath is knowingly
10 false, that could subject you to punishment for perjury or the
11 obstruction of justice or making a false statement.

12 Do you understand that?

13 THE DEFENDANT: Yes.

14 THE COURT: So, we went over this yesterday but just
15 to go over it again, do you read, write, speak and understand
16 English?

17 THE DEFENDANT: Yes.

18 THE COURT: How far did you go in school?

19 THE DEFENDANT: Eleventh grade.

20 THE COURT: How old are you now?

21 THE DEFENDANT: Thirty-eight.

22 THE COURT: Have you ever been treated by a
23 psychiatrist or psychologist?

24 THE DEFENDANT: No, sir.

25 THE COURT: Have you ever been hospitalized for any

1 mental illness?

2 THE DEFENDANT: No, sir.

3 THE COURT: Have you ever been treated or hospitalized
4 for alcoholism?

5 THE DEFENDANT: No, sir.

6 THE COURT: Have you ever been treated or hospitalized
7 for drug addiction?

8 THE DEFENDANT: No, sir.

9 THE COURT: Are you currently under the care of a
10 doctor for any reason?

11 THE DEFENDANT: No, sir.

12 THE COURT: In the last 24 hours have you taken any
13 pills or medicine of any kind?

14 THE DEFENDANT: No, sir.

15 THE COURT: Is your mind clear today?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand these proceedings?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, you have a right to be represented by
20 counsel at every stage of these proceedings; do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: You're represented by Crowell & Moring
23 attorneys. Are you prepared to go forward with this plea with
24 them representing you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, before I can accept any plea of
2 guilty, I need to make sure that you understand the rights that
3 you will be giving up if you plead guilty. So I want to go
4 over it again those rights.

5 First, you have the right to a speedy and public trial
6 by a jury on the charges against you such as the trial that's
7 going on right now.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Second, if there were a trial, you would
11 be presumed innocent and the government would be required to
12 prove your guilt beyond a reasonable doubt before you could be
13 convicted of any crime.

14 Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Third, at the trial you have a right to be
17 represented by counsel and if you cannot afford counsel then as
18 has already been the case, counsel will be representing you
19 free of charge.

20 Do you understand that?

21 THE DEFENDANT: Yes.

22 THE COURT: Fourth, at the trial you have the right to
23 see and hear all witnesses and other evidence against you and
24 your attorney can cross-examine the government's witnesses and
25 object to the government's evidence and can offer evidence on

1 your own behalf and have subpoenas issued to compel the
2 attendance of witnesses and other evidence on your behalf.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Fifth, at the trial you would have the
6 right to testify if you wanted to but no one could force you to
7 testify if you did not want to and no suggestion of guilt could
8 be drawn against you if you chose not to testify.

9 Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And sixth, even if you were convicted, you
12 would have the right to appeal your conviction.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, do you understand that if you plead
16 guilty you will be giving up all these rights?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Very good. Now, we went over the
19 indictment yesterday, but let me ask counsel, do you want the
20 indictment read again or do you waive the reading?

21 MR. MCGORTY: We waive the reading.

22 THE COURT: So, do I understand from the government
23 that the same Pimentel calculation that you presented yesterday
24 still applies?

25 MR. COYLE: Yes, your Honor.

1 THE COURT: Okay. And I seem to have --

2 MR. COYLE: Your Honor, actually, I will say we were
3 chatting amongst ourselves as to whether the two point
4 acceptance of responsibility reduction applies if you've
5 already at trial. I don't have it fully rung down but we think
6 it does.

7 THE COURT: This as you know -- repeatedly the
8 guideline calculation means nothing to me. So it wouldn't
9 matter one way or the other. I know the situation. But, do
10 you have a copy?

11 MR. COYLE: Ms. Rothman is running to go get it right
12 now.

13 THE COURT: So, remind me, what's the maximum that the
14 defendant faces on each of the counts?

15 MR. COYLE: The bank fraud and wire fraud conspiracy
16 count is a maximum of 30 years.

17 THE COURT: Count One?

18 MR. COYLE: The substantive bank fraud. Count Two is
19 a maximum of 30 years and aggravated identity theft is
20 mandatory minimum of two years to run consecutively.

21 (Continued on next page)

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25

1 THE COURT: You're facing a potential maximum of what,
2 62 years?

3 THE DEFENDANT: Um-hum.

4 THE COURT: You understand that?

5 THE DEFENDANT: Yes.

6 THE COURT: As I told you yesterday, it's still the
7 case, I have no idea what sentence I will impose if you plead
8 guilty. So if anyone has made any kind of promise or
9 prediction or estimate to you, that person could be wrong. But
10 if you plead guilty, you will still be bound by my sentence.

11 Do you understand that?

12 THE DEFENDANT: Yes.

13 THE COURT: Tell me now in your own words what it is
14 that you did that makes you guilty of these counts.

15 THE DEFENDANT: I conspired with others to commit
16 fraud.

17 THE COURT: Does that include the witness you just
18 heard from?

19 THE DEFENDANT: Yes.

20 THE COURT: And did you agree with her, among others,
21 to have a scheme to defraud banks by submitting phony checks?

22 THE DEFENDANT: Yes.

23 THE COURT: And did you receive at least part of the
24 proceeds of that fraud?

25 THE DEFENDANT: Yes.

1 THE COURT: And in connection with that conspiracy and
2 in connection with the substantive acts of defrauding the bank,
3 the banks, did you use identities of other persons that you
4 knew had not given permission to use their identities?

5 THE DEFENDANT: Yes.

6 THE COURT: Is there anything else regarding the
7 factual portion of the allocution that the government wish the
8 Court to inquire about?

9 One last thing. When you did all these things, you
10 knew what you were doing was illegal and wrong?

11 MR. COYLE: Did he know that the identities were real
12 people?

13 THE COURT: I will ask him that, although I continue
14 to believe that's not necessarily a requirement. But, for
15 example, you knew that Forsyth was a real company, yes?

16 THE DEFENDANT: I didn't know that was a real company.

17 THE COURT: Did you know that the reason the checks
18 were going to be cashed was because the bank was going to
19 believe these were real customers?

20 THE DEFENDANT: Yes.

21 THE COURT: I think that's good enough. Your
22 colleague says not good enough. Fine. You put a question or
23 let her put a question.

24 MR. COYLE: As part of the scheme, were real people's
25 or real companies' identifying information used to make those

1 fake documents? That's what enabled them to be cashed.

2 THE COURT: I will ask him that, but just looking at
3 the indictment, he has already stated all the elements of
4 Counts One and Two, so we are now concerned only with Count
5 Three, which is going to be, of all the counts here, the least
6 relevant because he has already served more than two years. So
7 we are talking the kind of issue that only a lawyer could love,
8 but, anyway.

9 The statute says that he has to use, without lawful
10 authority, a means of identification of another person during
11 and in relation to the bank fraud scheme. I am not sure that
12 requires that he know whether it's a real person or not. It
13 just requires that in fact it be another person or not, which
14 you can do a proffer on, and we have already heard some
15 testimony, even this afternoon, that would support that. I
16 don't think we need to ask Mr. Wells anything further.

17 I now have another copy of the *Pimentel* letter. We
18 went over this, Mr. Wells, later, but the government believes
19 that your guideline range, which is of no particular interest
20 to the Court, but occupies an inordinate amount of time of the
21 AUSAs in this district, that the guideline range is 188 to 235
22 months on Counts One and Two, plus the 24 months' imprisonment
23 mandatory on Count Three.

24 Do you understand that's their position?

25 THE DEFENDANT: Um-hum, yes.

1 THE COURT: Anything else we need to cover before I
2 ask the defendant to formally plead guilty?

3 Anything further from the government?

4 MR. COYLE: Not before that, your Honor. I want to
5 ask you one question at the end.

6 THE COURT: Go ahead.

7 MR. COYLE: You can proceed with the formal plea.

8 THE COURT: Anything else defense counsel wants me
9 to --

10 MR. MCGORTY: Just a proffer of venue from the
11 government, just so the record is complete. I think it carries
12 over from yesterday.

13 THE COURT: What do you want to proffer as to the
14 facts that these are real people?

15 MR. MCGORTY: Venue is --

16 THE COURT: Venue. Definitely have to proffer as to
17 that.

18 MR. COYLE: Yes, of course.

19 THE COURT: While I'm very interested in protecting
20 the people of Cos Cob, Brooklyn, not to mention Iowa, the
21 Southern District of New York is where we are concerned.

22 MR. COYLE: Your Honor, don't worry because right next
23 to Cos Cob is the Village of Rye Brook, which falls on the
24 Westchester County side of the line.

25 The government will proffer that its evidence would

1 show that the defendant himself cashed a fake check using a
2 fake identity at that M&T branch. The government's evidence
3 would show that the defendant conspired with his girlfriend
4 that was an employee of the DMV to give him customer account
5 information from DMV files in order to make the checks that are
6 used to commit the fraud.

7 THE COURT: You're talking about the DMV in Manhattan.

8 MR. COYLE: It is up in White Plains, your Honor.

9 THE COURT: That's part of the Southern District of
10 New York.

11 MR. COYLE: You heard from Ms. Sandrof that her
12 company that was a victim of the defendant's fraud is based
13 right here in Manhattan. That's where they have their office.

14 THE COURT: Yes, Mr. Wells.

15 THE DEFENDANT: Before you answer that, I was curious
16 about that because the 2019 Rye Brook, I was sentenced on that
17 already.

18 THE COURT: That may or may not be relevant, but this
19 was just to establish that something occurred in the Southern
20 District of New York, and the offense concerning Forsyth, for
21 example, occurred, the company was based in Manhattan. It
22 doesn't have to involve you being in the Southern District of
23 New York, although clearly you were at various times. It just
24 has to involve some part of the conspiracy being in the
25 Southern District of New York and ditto White Plains, where the

1 DMV was located.

2 Based, Mr. Wells, on everything we have discussed, how
3 do you now plead, first, to Count One, the conspiracy charge,
4 guilty or not guilty?

5 THE DEFENDANT: Guilty.

6 THE COURT: How do you plead to Count Two, the
7 substantive bank fraud charge, guilty or not guilty?

8 THE DEFENDANT: Guilty.

9 THE COURT: How do you plead to Count Three, the
10 aggravated identity theft charge, guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Because the defendant has acknowledged his
13 guilt as charged, because he has shown that he understands his
14 rights and because his plea is entered knowingly and
15 voluntarily and is supported by an independent basis in fact
16 containing each of the essential elements of the three
17 offenses, I accept his plea and adjudge him guilty of counts
18 One, Two, and Three of indictment S1 20 CR 633.

19 Mr. Wells, we are going to set a sentencing date, but
20 before the sentence the probation department will prepare
21 what's called a presentence report. As part of that you will
22 be interviewed by the probation officer. Your counsel could be
23 present to advise you of your rights, but under my practices
24 you personally need to answer the questions put to you by the
25 probation officer. And given your preferences, I'm sure that's

1 fine with you. But I just wanted to make sure you knew that.

2 The probation officer will want to hear what you have to say.

3 After that report is in draft form, but before it's in
4 final form, you and your counsel and also government counsel
5 will have a chance to review it and to offer suggestions,
6 corrections, and additions to the probation officer who will
7 then prepare the report in final to come to me.

8 Independent of that, counsel for both sides are hereby
9 given leave to submit directly to the Court in writing any and
10 all materials relating to any aspect of sentencing, provided
11 that those materials are submitted no more than one week before
12 sentencing.

13 We will set the sentencing down for?

14 THE DEPUTY CLERK: Tuesday, December 19, at 3:00.

15 THE COURT: Tuesday, December 19, at 3 p.m.

16 Yes, sir.

17 MR. MCGORTY: The day works for the defense, your
18 Honor. Thank you.

19 THE COURT: I think we will excuse Mr. Wells at this
20 point. I think we will then bring in the jury, and I'll
21 explain to them that the matter has been resolved. But I don't
22 want to put Mr. Wells in the awkward position of having the
23 jury stare at him while I explain to him that he has now pled
24 guilty.

25 Mr. Wells, I think you did the right thing, is my own

1 opinion, and we will move forward now to the sentencing. And I
2 want to repeat to you, at sentencing I want to know everything
3 about you; not just the bad but the good. Not just the
4 present, but the past. I look forward to hearing from you in
5 that regard.

6 Anything else that counsel needs to raise?

7 MR. COYLE: Yes, your Honor. The government would
8 like to raise one thing. As you know, you probably gleaned
9 from the government's opening statement, the government's proof
10 of the defendant's fraud was much broader than --

11 THE COURT: I assume you will bring that out in your
12 submissions to me. If we wind up having to have a *Fatico*
13 hearing, which I suspect we won't, but if we do, we do. We
14 will see what your adversary says about that.

15 MR. COYLE: Your Honor, I just wanted to raise that
16 because the government has flown up a number of witnesses from
17 Florida to prove a much bigger conspiracy. These are people
18 that work low-paying jobs. They took time off to get here.

19 And everything the government knows, we highly suspect
20 that the defendant will challenge the government's evidence and
21 that a *Fatico* will be necessary. It is a unique request.

22 In light of these very unique circumstances, the
23 government would request a one-day evidentiary hearing tomorrow
24 simply to hear from those witnesses, to not have to bring them
25 back up in order to prove up the extent of the government's

1 fraud when we move on the sentencing. It could just be two
2 witnesses, your Honor, tomorrow, for the purpose --

3 THE COURT: No. I want to see what you will submit,
4 and I want to see what he challenges, if anything. I think
5 Mr. Wells now knows that he has got to be more forthcoming, and
6 I will look forward to his being that way, and then we will see
7 what's in dispute.

8 You can certainly tell your witnesses how much the
9 Court appreciates them being here and I'm very, very happy that
10 they took the time. Frankly, they should be somewhat happy
11 that it may be that they won't have to testify at all. We'll
12 see.

13 MR. COYLE: I will share that message.

14 THE COURT: Very good.

15 Marshals, you can take Mr. Wells back.

16 Let's bring in the jury as soon as he is gone.

17 You can bring in the jury.

18 (Jury present)

19 THE COURT: Ladies and gentlemen, the reason we had
20 that lengthy delay is that the defendant, having heard the last
21 witness, decided to plead guilty to all charges against him,
22 and I just took his guilty plea, which is why we had to keep
23 you back in the room until that happened.

24 That's obviously a positive result. It's always good
25 when people admit to their crimes. And the sentencing will now

1 be up to me and it won't be for some time. We always do
2 investigations into everyone's past and all like that before we
3 impose sentence.

4 What I wanted to do is not only inform you that your
5 service is now completed, but you still get the full credit,
6 which means that you won't have to serve on a federal jury for
7 four years. I know you're heartbroken to hear that. But
8 nevertheless, that's -- I also -- I always observe juries out
9 of the corner of my eye, and I was looking at all of you this
10 afternoon, and you were all very tentative. It was clear you
11 were going to be a really terrific jury. So I am very, very
12 grateful for your help, but you are now excused.

13 (Jury excused)

14 THE COURT: I'm only sorry that I didn't get to see
15 the cross-examination of that witness, which would have been a
16 challenge indeed. I thank you, all counsel. This has
17 certainly been a different experience from most.

18 But I am grateful, first, to the government for their
19 continued patience, and I'm grateful to defense counsel for
20 their continued help to the defendant under very difficult
21 circumstances and to the cause of justice and that was all
22 greatly appreciated. And at least one cross-examination did
23 take place, so that was helpful to future experience.

24 Very good. I have another matter at 4:00. If you can
25 clear out. (Trial concluded)

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